EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية ـ المتوسطية لحقوق الإنسان

INCONSISTENT EUROPEAN POLICIES FAIL TO ADDRESS HUMAN RIGHTS ABUSES IN TUNISIA

THE EUROPEAN UNION-TUNISIAN RELATIONSHIP ON HUMAN RIGHTS ISSUES

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية ـ المتوسطية لحقوق الإنسان

INCONSISTENT EUROPEAN POLICIES FAIL TO ADDRESS HUMAN RIGHTS ABUSES IN TUNISIA

THE EUROPEAN UNION-TUNISIAN RELATIONSHIP ON HUMAN RIGHTS ISSUES

Copenhagen – September 2010

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK

Vestergade 16 -1456 Copenhagen K – Denmark

Tel : +45 32 64 17 00 – Fax : +45 32 64 17 02

Email : info@euromedrights.net

Website : http://www.euromedrights.org

Bibliographic information

Title : Inconsistent European policies fail to address human rights abuses in Tunisia

Corporate author : Euro-Mediterranean Human Rights Network (EMHRN)

Publisher : Euro-Mediterranean Human Rights Network (EMHRN)

Date of first publication : September 2010 - **Pages** : 81

ISBN : 87-91224-55-1

Translation into English: Pia Drewinski - **Translation into Arabic**: Ghada Haidar Rouhana - **Translation into Spanish**: Rais Abdelaziz

Proofreading and Editing : Euro-Mediterranean Human Rights Network (EMHRN)

Index terms : Human rights, international law, fundamental freedoms, European Union, Tunisia, European Neighbourhood Policy

This document has been produced with the financial assistance of the AECID. The contents of this document are the sole responsibility of the EMHRN and can under no circumstances be regarded as reflecting the position of the AECID.

TABLE OF CONTENTS

Executive summary

This report is published in the context of ongoing negotiations between Tunisia and the European Union (EU), with a view to grant an 'advanced status' to Tunisia in the framework of the European Neighbourhood Policy (ENP). Against this background, Tunisia took the decision, on 15 June 2010, to criminalize awareness activities carried out by Tunisian human rights defenders on human rights issues in the context of the EU-Tunisian relationship.

The report analyses the policies and practices of the Tunisian State in the field of human rights, and the policies of the EU institutions in this respect. It raises the following questions:

- Did Tunisia comply with its commitments towards the EU in the field of human rights?

- Did the EU, for its part, comply with its own human rights commitments in its relationship with Tunisia, as stated in the Treaty of Lisbon and in the association agreement with Tunisia?

- Did the EU act consistently and steadily in its relations with Tunisia compared to the commitments it made in the framework of the European Neighbourhood Policy (ENP), reference texts and strategic guidelines on human rights?

Tunisia's commitments

In 1995, within the framework of the Barcelona Process and regional cooperation with the EU, Tunisia undertook to respect human rights and fundamental freedoms, in accordance with the United Nations Charter and the Universal Declaration of Human Rights. By signing an association agreement with the EU, Tunisia agreed that its internal and international policies would be guided by respect for human rights and democratic principles.
In 2008, during the Union for the Mediterranean (UPM) Summit, Tunisia undertook to *'strengthen democracy and pluralism by allowing a wider political involvement and adhering to all human rights and fundamental freedoms'.* Within the framework of the ENP Action Plan, signed on December 2004, Tunisia also announced it would cooperate with the EU on the basis of common values which include democracy, the rule of law, good governance and respect for human rights; and contribute to the strengthening of reforms guaranteeing democracy and the rule of law, a more independent judiciary system and respect for human rights and fundamental freedoms.

Five years after the adoption of the Action Plan, none of the commitments on human rights and democratic reforms have been met. Quite the contrary, this report shows that the Tunisian authorities systematically and steadily violated most of the rights and freedoms mentioned in which are part of the EU-Tunisia cooperation while ignoring democratic principles.

The period surrounding the legislative and presidential election of 25 October 2009 saw a serious deterioration in public freedoms and the situation of human rights defenders. More recently, on 15 June 2010, one month after the meeting of the EU-Tunisia association council took place, the Tunisian government passed a bill stating «*anyone who establishes, directly or indirectly, contacts with agents of a foreign state, or foreign institutions or organisations with a view to damaging Tunisia's vital interests and economic security would be liable to prison sentences*».

In a public statement, Mr Lazhar Bououni, Minister of Justice and Human Rights, explained that '*damaging vital interests*' included '*undermining Tunisia's efforts to reach an advanced status with the European Union*'.

The EU's response

The report questions the response of the European Union to the attitude of the Tunisian authorities by reviewing essential documents and the main EU-institutions dealing with EU-Tunisian relations.
The report concludes that the EU should have adopted much stronger language vis-à-vis the Tunisian authorities, considering the blatant human rights violations and breaches of commitments towards the EU.

However, the Commission and Council were careful not to find themselves in a position where it could be argued that the EU's relations with Tunisia are not driven by respect for human rights and democratic principles. The EU thereby 'kept its hands clean'.

However, the EU failed to meet its commitments. The EU did not act consistently and steadily in its relations with Tunisia given the undertakings she gave both within the ENP framework and in its external human rights policy core documents.

For instance, the EU decided to allocate, for the period 2011-2013, €240 million worth of incentives, in addition to the $900 million mid and long term pledges announced by the European Investment Bank (EIB), which was satisfied with "the excellent cooperation with this very good partner". This despite 1. Successive yearly progress reports released by the European Commission within the framework of the ENP which repeatedly pointed out no significant progress had been made on the human rights areas covered by the association agreement and ENP Action Plan with Tunisia, 2. The freezing of the EIB subsidies to Tunisian Human Rights NGOs under EIHRD and, lastly, 3. The Commission's failure to report any concrete outcome from its dialogue on human rights with the Tunisian authorities.

Lastly, despite Tunisia's complete failure to meet its human rights and democracy commitments towards the EU – a failure disclosed by this report and numerous EU reports, the EU had already expressed its readiness to work towards an advanced partnership with Tunisia back in 2008. It thus appears that the EU did not use all the means at its disposal to promote and protect human rights in Tunisia and that it even played a key role in maintaining the current regime in power.

The report reviews the main documents, mechanisms and instruments shaping the human rights dimension of the EU-Tunisian relations; it takes stock of the respect for human rights and democratic principles in Tunisia (including public freedoms, torture and impunity, the subordination of the judiciary, political trials, economic, social and cultural rights, etc.) and provides readers with a list of 42 web 'links'. The report also analyses the implementation of European human rights policies towards Tunisia since 2007.

Introduction

On 11 November 2008, as negotiations were ongoing to strengthen relations between the EU and its South Mediterranean partners[1] , the Tunisian government expressed the wish to deepen its relations with the EU and move towards an 'advanced status' ('enhancement'), like Morocco and Israel.

Only about fifteen months later – after the relations between Tunisia and the EU had become tensed following the tougher authoritarian line adopted by the Tunisian government before and during the presidential and legislative elections of 25 October 2009 – did Tunisia finally submit the preliminary document on its vision of the conditions of implementation of the enhancement, a prelude to launch negotiations which have as stumbling blocks Tunisia's reluctance to truly implement political reform on the independence of the judiciary, pluralism of information, the fulfilment of commitments made in the framework of the United Nations human rights conventions, and governance (the fight against corruption).

But Tunisia, as an 'assiduous pupil' of the liberalisation policy for the establishment of the 'Euromed free trade zone', was still able to benefit from a record level of European funding (per capita)[2] .

Relying on the support of at least three EU Member States (Italy, France and Spain) strongly involved in the ' 5+5 dialogue ' with the 'Western Mediterranean' [3] and main promoters of the Union for the Mediterranean (UM) launched in Paris in July 2008, the Tunisian authorities had hoped to obtain the highly coveted enhanced status before the end of the Spanish presidency (30 June 2010).

In the meantime, and considering poor progress in the field of democracy and human rights in Tunisia, the policy of the European Union, its institutions and member states regarding the human rights situation in Tunisia has been repeatedly questioned, leading to increasing scepticism, in Tunisian democratic circles and beyond, about the EU's official position statements. As a consequence, the Union's capacity to implement, in the framework of its relations with Mediterranean third countries – particularly Tunisia – the provisions of the 'Barcelona Declaration', which created the Euro Mediterranean Partnership (EMP) in 1995, and of article 2 of the Association Agreement (signed in 1992 and in force since 1998) which provides that "*Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement* " has been challenged.

Also regularly challenged are the objectives, rather ambitious in this respect, of the Plan of Action in the Framework of the European Union's Neighbourhood Policy based on "*the mutually recognised acceptance of common values such as democracy, the rule of law, good governance, respect for human rights, market economics, free trade, sustainable development, poverty alleviation and the strengthening of political, economic, social and*

1 See '*EMHRN position paper on the European Neighbourhood Policy*' at www.euromedrights.org and '*Hearing at the European Parliament (sub-committee on Human rights) of EMHRN President Kamel Jendoubi on 18 January 2008, on ' the ENP : the example of Tunisia '.*

2 For instance, since 1978, Tunisia benefitted from € 3.6 billion from the EIB.

3 Algeria, Libya, Morocco, Mauritania, Tunisia and five countries of the North: Spain, France, Italy, Malta and Portugal.

institutional reforms".

Lastly, the scepticism caused by a poor record in terms of democratic progress and protection of human rights may well discredit, as far as Tunisia is concerned, the EU's 'human rights and international humanitarian law guidelines '[4] adopted and updated between 2001 and 2008, which are "an integral part of the European Union's Policy towards Third Countries". In March 2009, Javier Solana, then Secretary-General/High Representative for the Common Foreign and Security Policy, considered that "the issue of human rights is at the heart of this policy".

But in fact, the implementation of those solemnly proclaimed principles in practice meets many difficulties[5] .

It is in this context that the EMHRN decided to write a report on human rights issues in the relations between the EU and Tunisia.

The study of the relations between the EU and Tunisia is indeed important in itself, but all the more so since Tunisia was the first Mediterranean state to conclude an association agreement of a 'new generation', which included a provision pertaining to human rights, and which was meant to become a constitutive element of the Euro-Mediterranean Partnership aimed at establishing a common space for "*peace, stability and prosperity*", including through the strengthening of democracy and respect for human rights .[6]

The agreement with Tunisia is considered as a precursor of the EMP, a sort of model case study for it. For this reason, a study of the relations between the EU and Tunisia can throw light not only on this particular bilateral agreement, but also on trends that can be observed in the region. The reasons which motivated the EMHRN to write a report on the EU's relations with Tunisia are part of the same spirit which made it chose another key Euro-Mediterranean state, Israel, when it prepared similar reports in the past [7].

Against this background, the EMHRN tried to analyse – with supportive facts and statements – the human rights policies and practices of the Tunisian state as well as the policies of the various European Union institutions, i.e. the Member States and the Council of the European Union, the European Commission and the European Parliament, vis-a-vis the human rights situation in Tunisia.

---

4 Those eight guidelines deal with, in chronological order of adoption: death penalty, torture and other cruel, inhuman or degrading treatment or punishment, human rights dialogue with third countries, children in armed conflicts, human rights defenders, the promotion of international humanitarian law, the promotion and protection of the rights of the child, violence against women and the fight against all forms of discrimination towards them.

5 Although it is worth mentioning progress achieved in spite of the difficulty for the European Initiative for Democracy and Human Rights (EIDHR) to provide financial support to NGOs and civil society. Established in 1994 through an initiative of the European Parliament, the EIDHR brings together the budget lines for the promotion of human rights, democratisation and conflict prevention, which are mainly implemented in partnership with Non Governmental Organisations (NGOs) and some International Organisations.

6 Barcelona Declaration, 1995.

7 '*A Human Rights Review on the EU and Israel – relating commitments to actions, 2003-2004*', EMHRN, 2004;'*A Human Rights Review on the EU and Israel – Mainstreaming or selectively extinguishing Human Rights? 2004-2005*', EMHRN, 2005. The EMHRN plans to publish similar reports on he EU's relations with other countries around the Mediterranean.

The pragmatic approach adopted for the report's methodology is based on an analysis of the main documents, initiatives and positions of different bodies under the authority of these institutions[8] . The report asks the following questions:

- Did Tunisia comply with its commitments towards the EU in the field of human rights?
- Did the EU comply with its own human rights commitments in its relations with Tunisia, as they are stated in the Treaty of Lisbon and in the Association Agreement?
- Did the EU act consistently and steadily in its relations with Tunisia compared to the commitments it made in the framework of the European Neighbourhood Policy (ENP) and reference texts and strategic guidelines on human rights?

We have to admit that, in this field, there are loopholes in public data and it is difficult to obtain information on policies, programmes and projects pertaining to the chapter Democracy and Freedom and on their funding situation and state of implementation. For example, the records of the discussions in the human rights sub-Committees between the EU and Tunisia[9] are considered confidential and cannot be publicly referred to, including in the debates within the bodies of the European Parliament.

No revolutionary conclusions were reached in this report, but their value lies in the fact that they are supported by systematic analysis which confirms that 1) Tunisia acted in breach of its commitments towards the EU in the field of human rights; 2) The EU did not act in breach of its commitments under the treaties and obligations with Tunisia but falls short of implementing its own declarations and; 3) the EU human rights policies towards Tunisia suffer from major incoherence. Failures have been observed which widen the gap between the texts of reference mentioned above (reinforced by article 2.5 of the Treaty of Lisbon)[10] and the policies implemented in practice [11].

> *"A small country of ten and a half million people with limited natural and economic resources, Tunisia nevertheless plays, as noted in the analysis of the Directorate-General 'External Policies of the Union' of the European Parliament[12] – a substantial role in the consolidation of relations of dialogue and cooperation between the two shores of the Mediterranean. It managed to*

8 In the framework of this research the EMHRN called upon more than 50 interlocutors, either through interviews and/or with a letter containing a non-exhaustive list of documents needed.

9 The third meeting of the EU-Tunisia Sub-Committee on Human Rights took place on 25 February 2010.

10 Article 2, paragraph 5: '*In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter*'.

11 In its recent report to the European Parliament's Human Rights Sub Committee of 4 March 2010 on '*The European Union's policies of support to human rights defenders',* the chairperson of this body noted in this instance a '*worrying implementation gap*'. Report on 'The EU's Policy of support to human rights defenders (2009/2199(INI)), Committee on Foreign Affairs of the European Parliament http://www.enpi-info.eu

12 Information note: Analysis of progress in the implementation of the Financial Instrument of the European Neighbourhood Policy in Tunisia http://www.europarl.europa.eu/activities/committees/studies.do?language=FR (in French)

avoid internal political crises and keep its distances from regional tensions, and even contributed to diffuse them. It went through a process of modernisation, including economical, undoubtedly supported by its determination and commitment to be fully integrated in the Euro Mediterranean Partnership. However, we are bound to note that in spite of the progress achieved, Tunisia remains at risk of political turbulences, which can jeopardise the progress and stability it showed so far. The events [in the first half of 2008] in Gafsa mining basin (…) show that risks of instability still exist. The weakest link in the Tunisian State is undoubtedly the persistence of institutional obstacles undermining the efficiency of mechanisms for political negotiation and integration, and more generally the slow pace of the democratic transition initiated in 1987 with the accession of the current President of the Republic to the highest office."

These mildly expressed comments seem to be systematically censored in the Tunisian governmental press.

The statement published on 26 January 2010 at the end of a press conference following a five-day mission to Tunisia of Mr Martin Scheinin, UN Expert on Human Rights and Counter Terrorism, as invited by the Tunisian government, was intentionally shortened. Only the positive protocol aspects were reported by the official press, which was careful not to include, amongst other, his comments on the "*serious discrepancies between the law and what was reported to me as happening in reality*" or on "*the disproportionately low number of prosecutions or other clear findings related to torture, compared to the frequency of allegations*" as well as his conclusions "*I am convinced that the multi-dimensional approach to preventing terrorism through social, educational and anti-discrimination measures, as adopted by Tunisia is a good example that is worth exploring further. However, I am concerned that the fruits of these doubtlessly positive policies are easily undermined by violations of the law which, as always, have a counterproductive effect in the fight against terrorism.*"[13]

As mentioned above, the report provides a non-exhaustive survey of violations and denials of human rights and freedoms, such as the consequences of the improper implementation of the law against terrorism, systematic torture, arrests and harassment of independent journalists, slander and defamation campaigns, ostracism and threats to defenders[14] , as well as repression towards the leaders of the social protests in the mining basin or towards students members of the UGET (Union générale des étudiants tunisiens, Tunisian students union) which adds to the harassment of families of opponents and former political prisoners and an exclusively repressive policy against Islamic extremists.

This is the reality that the institutions of the European Union and the Euro-Mediterranean Partnership should take into account, beyond the necessary diplomatic prudence, in order to bring credit again to the European strategy of foreign and security policy, reinforced by the Treaty of Lisbon, which clearly states that[15] : *"Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order."*

13 www.ohchr.org

14 See amongst others the joint positions of the International Observatory for the Protection of Human Rights Defenders – a joint programme of the FIDH/OMCT and the EMHRN, on the website of those three organisations (fidh.org and omct.org) and the press release (of 18 December 2009) by 11 organisations on both sides of the Mediterranean entitled: "Tunisia, new smear campaign inciting to violence and hatred against Human Rights Defenders" (euromedrights.org)

15 http://europa.eu. Treaty of Lisbon

Chapter 1 - Human rights documents, mechanisms and instruments in the relations between the EU and Tunisia.

The EU human rights obligations

The EU's obligations to respect human rights were contained in article 6, paragraph 2 of the Treaty on European Union until the adoption of the Treaty of Lisbon:

> *'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'.*

The obligation to respect and promote respect for human rights in third countries was contained in two legally binding provisions of the Treaty establishing the European Community. Articles 177 and 181a stated that the policies of the Community in the field of economic, financial and technical cooperation, as well as development cooperation, contribute to the goal of '*respect for human rights and fundamental freedoms'*.

Moreover, article 11 of the Treaty on European Union stated that one of the objectives of the EU common foreign and security policy is "*to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms*".

Since the entry into force of the Treaty of Lisbon, the EU human rights obligations are contained in articles 2.5 and 21.1:

> *"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter." (Art 2.5).*

> *"The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law." (Art. 21.1)*

Mutual obligations between the EU and partner countries

The clause of 'essential element', incorporated with minor variations in all framework agreements with third countries since 1995, is for the EU an additional source of commitment to respect human rights, and a source of mutual obligations between thirds countries and the EU. It is also frequently dubbed 'the human rights clause'.

Article 2 of the EU-Tunisia Association Agreement specifies that "*relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement*"

Such clauses provide the EU (and in principle partner countries) with a legal basis to initiate political action, in the framework of the association agreements, to fulfil its commitments to respect and make third countries respect human rights. It can ultimately lead to the suspension of the agreement itself, since according to the international law on treaties (Vienna Convention), the notion of 'essential element' precisely entails that the breach of an essential element of a treaty by a party can be put forward by the other party to suspend the execution of the treaty.

The clause of 'essential elements' implies that both parties agree as to the essential character of 'respect for human rights'. It also compels them to implement this essential element, throughout the whole period of the agreement, in two concrete fields:

> *"Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement."*
>
> *"Respect for human rights and democratic principles (…) guide their domestic and international policies (…)"*

Both parties also recognize that breach, by one or the other party of one of those two conditions affects the achievement of the objectives of the agreement, even if all the other provisions of the text are accurately implemented. Such situation could also lead to the agreement functioning differently from what had been anticipated, with possible unacceptable consequences for the other party. In this sense, the clause on 'essential elements' is a 'provision essential to the fulfilment' of 'the aim or the goal' of the agreement.

It is worth remembering that the EU committed to respect those two conditions, and one should not forget that not only are these conditions opposable to and by Tunisia and the many other third countries with which the EU has concluded agreements containing a clause of 'essential elements', but that they also create obligations under European Law which are binding for EU institutions.

Stating that all the provisions of the agreement itself shall be based on respect for human rights obliges the EU institutions and Member States not to accept nor tolerate interpretation, application or implementation of the agreements, by the EU as well as by the partner country, in a manner which could undermine human rights.

Any action or deliberate lack of action by the European Union, which can reasonably be considered to increase the probability, frequency or gravity of human rights violations by Tunisia (or the EU itself), would be in breach of the clause on 'essential elements'. Given that all the provisions of the agreement are based on respect for human rights, and that 'respect for human rights' forms an 'essential element' of the agreement, no deliberate action or lack of action can be justified under any other provision of the association agreement.

In this respect, the clause of 'essential elements' places European Law on the same level as the 'clean hands principle', and the 'precautionary principle', which entails refraining from any action which would knowingly encourage others to abuse human rights, and taking the necessary precautions when there are several reasons to believe that an action or a lack thereof could facilitate, worsen or increase the likelihood of gross human rights

violations [16].

In its communication of May 2003 on strategic guidelines to reinvigorate EU actions on human rights and democratisation in the cooperation with Mediterranean Partners[17], which was endorsed by the Council on 5 November 2003, the European Commission links the 'essential elements' clause to the establishment of a political dialogue and consultation, reinforced by a positive conditionality:

> *"However, "essential element" clauses do not necessarily suggest a negative or punitive approach – they can be used to promote dialogue and co-operation between partners through encouraging joint actions for democratisation and human rights, including the effective implementation of international human rights instruments and the prevention of crises through the establishment of a consistent and long-term co-operative relationship."*
>
> *In addition, Article 3 of the Association Agreements provides the legal basis for the establishment of regular institutionalised political dialogue between the EU and partner countries. The EU should continue its efforts to deepen the substance of this dialogue on human rights and democratisation issues, not only in general terms or related to individual cases, but by focusing on specific operational issues.*

In its earlier communication of May 2001 on the role of the European Union in the promotion of human rights and democratisation in third countries, approved by the Council on 25 June 2001, the Commission stated more clearly that the weapon of suspension should only be used as last resort:

> *" […] The most effective way of achieving change is therefore a positive and constructive partnership with governments, based on dialogue, support and encouragement. This should aim to improve mutual understanding and respect, and promote sustainable reform. However a prerequisite for success is that these states are genuinely ready to co-operate. The EU should pursue this approach wherever possible, while recognising that in some cases, the third country may have no genuine commitment to pursue change through dialogue and consultation, and negative measures may therefore be more appropriate. This is the basis on which the EU's essential element agreements, and the 'suspension clauses' operate. All avenues for progress are explored before the EU resorts to sanctions ".*[18]

The Commission also suggests in this document that the best ways to implement these commitments include:

- To promote coherent and consistent policies to support human rights and democratisation. Coherence must govern both the different policies of the European Community and their relationships with other EU actions, especially in

16 On the source of this analysis, see the report by the EMHRN: '*A Human Rights Review of the EU and Israel – Relating Commitments to Actions, 2003-2004'.* Copenhagen 2004.

17 COM(2003) 294 final version, Brussels 21.05.2003.

18 Communication of the Commission to the European Council and Parliament, Role of the European Union in the promotion of human rights and democratisation in third countries, COM(2001) 252 final version, 8 May 2001, pp. 5 & 27

the framework of the common foreign and security policy;

- To make human rights and democratisation a greater priority in the European Union's relations with third countries and to be more proactive, including by making use of the opportunities offered by political dialogue, trade and external aid.
- To adopt a more strategic approach to the European Initiative for Democracy and Human Rights (EIDHR), by putting programmes and projects on the ground in line with the Commission's commitments in the field of human rights and democracy.
- To ensure that the wording of all EU policies avoids having a negative impact on human rights, and has the highest possible positive impact on them [19].

European Neighbourhood Policy (ENP)

The European Neighbourhood Policy (ENP) is born out of an idea raised during the European Council in Copenhagen in December 2002, which suggested that the Union would be well advised to seize the opportunity of Europe's enlargement to improve its relations with neighbouring countries.

When the Union was expanded from 15 to 27 Member States, those states drafted a new treaty to guarantee an efficient and democratic functioning of the EU. In the course of this process, it became obvious that many Europeans had interrogations as to the final borders of the European Union and even as to its identity.

The ENP reflects the EU's willingness not to create new divides within the new, enlarged Europe and to promote stability and prosperity within the new borders of the EU and beyond. Action Plans under the 'European Neighbourhood Policy' were adopted for countries in the Southern Mediterranean, countries of the South Caucasus and those countries in Eastern Europe that are currently not declared eligible for European Union membership.

ENP countries cannot become EU members, but they are supposed to share benefits of the enlargement as partners. Unlike the adhesion process, for which clear criteria are established that candidate countries must comply with in order to enter the Union, the ENP is based on agreed partnership and common interests.

The EU negotiated a Plan of Action with each partner. Plans of Action are political documents which define strategic policy objectives and criteria against which progress will be assessed over several years. They also list a number of priorities to be respected in order to deepen mutual commitment towards common values. In this regard, an important dimension of the ENP is the dissemination of values of respect for human rights and democratic governance.

> *"The method proposed is, together with partner countries, to define a set of priorities, whose fulfilment will bring them closer to the European Union. These priorities will be incorporated in jointly agreed Action Plans, covering a number of key areas for specific action: political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU's Internal Market; justice and home affairs; energy, transport, information society, environment*

19 Ibid

and research and innovation; and social policy and people-to-people contacts."

"The privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development. Commitments will also be sought to certain essential aspects of the EU's external action, including, in particular, the fight against terrorism and the proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution ".[20]

The Plans of Action build on a set of common principles, as we have seen, but reflect the specific state of relations with each country, its needs and capacities as well as common interests. The level of ambition of the EU in the relations with its neighbours will also take into account the extent to which these values are shared in practice.

New benefits should only be offered to reflect the progress made by the partner countries in political and economic reform. In the absence of progress, partners will not be offered these opportunities .[21]

In 2003-2004, several communications and conclusions of the European Council confirmed the establishment of the ENP as a policy of the EU, and in 2004 the report of the seven first countries concerned and the respective action plans were drafted.

The ENP is based on the Association Agreements and builds on three 'pillars':

- A **differentiated** and progressive **approach** of joint ownership, which provides the basis for a policy document, the Plan of Action, jointly negotiated between the two parties.
- **'Positive conditionality'** based on an annual progress report and a review of the Action Plan by sectoral sub-committees.
- Financial incentives: since 1 January 2007, the **European Neighbourhood and Partnership Instrument (ENPI)** (which replaced the MEDA programme in 2007), translates into **Indicative National Plans** covering three years, on the basis of which are drafted national strategy papers for each partner specifying the main objectives, guidelines and priority sectors for financial planning jointly agreed upon by the European Commission and the countries where they are applied.

The objectives of the ENP are more detailed than those of the Association Agreements, and follow four main lines:

- Intensification of political, economic and cultural cooperation.
- EU support to reforms including on human rights and fundamental freedoms
- Access to the EU market.
- Access to European programmes and agencies.

---

20 Brussels, 12.5.2004, COM(2004) 373 final, Communication of the Commission, European Neighbourhood Policy, Strategy Paper SEC(2004) 564, 565, 566, 567, 568, 569, 570}

21 Brussels, 11.3.2003, COM(2003) 104 final, Communication of the Commission, a Wider Europe: Neighbourhood, a New Framework for Relations with our Eastern and Southern Neighbours.

> Once the EU and a partner country agree on a Plan of Action, it becomes the reference document for mid-term relations between the EU and the country concerned.

Three types of bodies monitor the implementation of the Association Agreements, and of the ENP Plans of Action since their adoption:

- The Association Council: Consultations at the ministerial level (Presidency, EU Council, EU Commission).
- The 'Association Committee': More frequent consultations at the senior civil servants level (EU Council, EU Commission).
- Sectoral 'sub-Committees'. Working groups and ad-hoc bodies mandated by the partnership and cooperation agreements or by the association agreements, which are created to deal with those fields of cooperation.

'Human Rights' Guidelines of the EU

In addition to the fundamental EU documents and instruments, the 'Guidelines on Human Rights and International Humanitarian Law', adopted and updated between 2001 and 2008 are "*an integral part of the EU's policy towards its third countries partners* [22]".

In its Guidelines on Human Rights Dialogue, the European Union commits to intensify the process of mainstreaming human rights and democratisation objectives in all aspects of its external policy.

In this perspective, the EU must guarantee the integration of human rights, democracy and the rule of law in all meetings and discussions with third countries at all levels, be it ministerial meetings, joint committees or formal dialogues carried out by the Council's Presidency, the Troika, Heads of missions or the Commission[23] . It must also ensure the integration of human rights, democracy and the rule of law in programmatic discussions and country-specific strategy documents.

In its Guidelines on Human Rights Defenders, the EU commits to invite EU Heads of missions to discuss the situation of human rights defenders at meetings of local human rights working groups. If need be, Heads of missions should make recommendations to the 'Human Rights' Group (COHOM[24]) with a view to initiating possible action by the EU, including condemnation of threats and attacks on human rights defenders, as well as public statements and action in situations where human rights defenders face an immediate or serious threat.

Heads of missions can decide to carry out urgent action locally to support human rights defenders facing immediate or serious threat.

EU missions can for instance take the following measures:

- Establish local strategies for the implementation of the Guidelines, […] EU missions

22 See http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC8308123FRC.pdf

23 These bodies will be modified following the appointment of Mrs Ashton and the establishment of EEAS.

24 The Council Working Party on Human RIghts (COHOM) is composed by representatives of member States

shall strive to actively involve Human Rights Defenders and their organisation in the establishment and monitoring of the implementation of local strategies.

- Organise at least one meeting per year with human rights defenders and diplomats to discuss amongst others the local human rights situation, the EU's implementation strategy in this respect and the application of the local strategy for the EU Guidelines on human rights defenders;

- Provide, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations, including handing them prizes they are being awarded; visit where appropriate Human Rights Defenders in custody or under house arrest and attend and observe trials of human rights defenders[25] .

Support to civil society

The European Instrument for Democracy and Human Rights entered into force on 1 January 2007 and succeeded to the European Initiative for Democracy and Human Rights (EIDHR). It targets third countries and it is endowed with a budget of € 1.104 billion for 2007-2013.

EIDHR sets five priority objectives:

- Strengthen respect for human rights and fundamental freedoms in countries and regions where they are most at threat.
- Strengthen the role of civil society in the promotion of human rights and democratic reforms.
- Promote human rights and democracy activities in the fields covered by European approaches.
- Support and strengthen regional and international frameworks for the protection of human rights, justice, the rule of law and the promotion of democracy.
- Build trust in democratic election processes and improve their reliability and transparency through election observation.

EU – Tunisia, from the 1976 Cooperation Agreement to the ENP

Tunisia and the European Community entered into contractual relations in 1976 with the signature of a Cooperation Agreement. Twenty years later was launched the Barcelona Process, which became the cornerstone of the relations between the EU and the Mediterranean region with the creation of the Euro-Mediterranean Partnership (EMP), launched at the Barcelona Conference in 1995.

The EMP establishes a policy with ambitious long term goals for the EU and Mediterranean partners – including Tunisia – with the overall objective to create an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity, which "*requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development, measures to combat poverty and promotion of greater understanding between cultures, which are all essential aspects of partnership*".Parties committed to abide by the United Nations Charter and the Universal Declaration of Human Rights and other obligations under international law, including those contained in multilateral and regional instruments. Respect for human rights and fundamental

25 EU Guidelines – European Union Guidelines on Human Rights Defenders

freedoms (including freedom of expression, association, thought, conscience and religion) are repeatedly reasserted.

Parties also committed to deepen the rule of law and democracy in their political systems, while acknowledging the right for all countries to freely chose and develop their own political, social, cultural, economic and judicial system.

The objective and main challenge of the Euromed set-up launched in Barcelona in 1995 is to establish, at the level of the Euromed area, a free trade zone, based on a decidedly liberal market economics approach. The novelty in 1995 was to give the partnership policy a social and a political dimension (hopes for peace in the Middle East and human rights dimension) to make it a process of a different quality than other free trade zones, including American ones.

The association agreement, signed in 1995 and which entered into force in 1998, gives more details about the specific sectors in which the objectives of the Euro-Mediterranean partnership can be developed bilaterally.

As previously mentioned, article 2 of the EU-Tunisia association agreement states that:

> *"Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement"*

The aborted Oslo process and the toughening of Israel's policy, the crisis in Iraq and the tragic deadlock in the American occupation war, supported by Great Britain, the criminal terrorist attacks of 11 September 2001 and the obsession about security and 'counterterrorism' it brought about, and finally the stalemate in migration policies within the Euro-Mediterranean area are all factors which in time increasingly lead to believe that the Barcelona Process is reduced to the establishment of a free trade zone[26] . It is indeed clear that the hope created by the Barcelona Declaration in 1995 has been greatly reduced.

The decision taken in 2008 to create the Union for the Mediterranean to succeed the Barcelona Process does not seem appropriate to remedy the deficiencies of the EMP. However, it is worth mentioning that heads of state and governments – including, again, Tunisia – in the Declaration of 13 July 2008 underlined "their commitment to strengthen democracy and political pluralism by the expansion of participation in political life and the embracing of all human rights and fundamental freedoms. They also affirm their ambition to build a common future based on the full respect of democratic principles, human rights and fundamental freedoms, as enshrined in international human rights law, such as the promotion of economic, social, cultural, civil and political rights, strengthening the role of women in society, the respect of minorities, the fight against racism and xenophobia and the advancement of cultural dialogue and mutual understanding ."[27]

---

26 *'Droits de l'Homme, État de droit et Libertés : Revisiter le partenariat Tunisie-Union européenne'* by Khémaïs CHAMMARI (Seminar on the 10th anniversary of CRLDHT)

27 Joint Declaration of the Paris Summit for the Mediterranean (13 July 2008)

The ENP and Tunisia

The Plan of Action under the European Neighbourhood Policy (ENP) between the EU and Tunisia was adopted in July 2005 for a period of up to five years. It states, amongst others, that its objectives are based on *"the mutually recognised acceptance of common values such as democracy, the rule of law, good governance, respect for human rights, market economics, free trade, sustainable development, poverty alleviation and the strengthening of political, economic, social and institutional reforms."*

"*The consolidation of reforms which guarantee democracy and the rule of law*", the consolidation of "*the independence and efficiency of the judiciary and improve prison conditions*" and "*respect for human rights and fundamental freedoms*" are among the priority actions of the action plan[28] . Other objectives the EU and Tunisia agreed upon are: to further increase participation by all sections of Tunisian society in political life; further develop the role of civil society; ensure that national legislation complies with international law on human rights and with United Nations recommendations; continue to promote the right to associate and to assemble and freedom of expression and opinion on the basis of relevant recommendations by the UN ICCPR Committee[29] , including in relation to the role of NGOs; encourage cooperation initiatives in the framework of the Association Agreement designed to promote human rights and civil society.

3 types of bodies monitor the implementation of the Association Agreement and, since its adoption, of the ENP - Plan of Action: the EU-Tunisia Association Council, the Association Committee and eleven sub-Committees[30] .

The 'Human Rights sub-Committee' meets once a year, alternately in Brussels and in Tunis. It has very strict and limited rules of procedures (compared with the sub-committee for Morocco, Jordan and Palestine), and its agenda and the summary reports of its discussions are not public. Other sub-Committees which should also deal with human rights-related issues are the sub-Committees on 'justice and security' and 'social affairs and migration'.

An informal NGO consultation by the European Commission (in Brussels and Tunis) is scheduled prior to and following each session of the Human Rights sub-Committee.

EU economic support

Tunisia benefited from the MEDA programmes ('measures to accompany reform'), the Euromed financial implementation instrument until 2007, which was replaced on 1 January 2007 by the European Neighbourhood and Partnership Instrument (ENPI). The EU's financial support to Tunisia covers many sectors: macroeconomic reform, customs, ports, privatisation, financial sector, overall education sector, financial reform and health insurance; projects have also been carried out in the field of the media and justice.

A large part of EU interventions are made through budgetary support (50% of ongoing programmes in 2006), both at the macroeconomic and at the sectoral level. In total, from 1995 till 2006, the MEDA programme in Tunisia committed €946 million, of which €352

28 See the Plan of Action for Tunisia: http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_fr.pdf

29 International Covenant on Civil and Political Rights.

30 Composed of, on the one hand, civil servants from the different Tunisian departments concerned and the representatives of the Tunisian Embassy to the EU, and on the other hand representatives of the European Commission and Member States.

million for the period 2002-2006. Effective payments of €658 million were made for 1995-2006, of which €405 million for 2002-2006 and €330 million for 2007-2010.
Furthermore, the European Investment Bank (EIB) continues to provide increased financial support in the Mediterranean area through its specific instrument, the Euro-Mediterranean Investment and Partnership Facility (EMIPF). Tunisia is among the very first beneficiaries of EIB loans.

The recent 'Memorandum of Understanding' on the 'National Indicative Programme – NIP' formally signed on 30 March 2010 by Commissioner Stefan Füle (Enlargement and ENP) provides funding of €240 million for 2011–2013, to which are added mid and long term pledges of around $900 million announced by the European Investment Bank (EIB) on 15 March 2010. Since 1978, Tunisia benefited from €3.6 billion from the EIB[31] .

In summary, Tunisia has been among the main beneficiaries of EU support to all Mediterranean countries, both in terms of grants and loans, in proportion to its population. We can legitimately ask ourselves whether Tunisia, in return for this support, has complied with its human rights commitments towards the EU.

31 See follow-up report by the Commission

Chapter 2 - Respect for Human Rights in Tunisia: state of play.

The aim of the following elaboration is not to provide a comprehensive analysis of the situation of human rights and freedoms in Tunisia, but rather to highlight those elements which enable us to assess whether Tunisia has complied with its human rights obligations towards the EU, as detailed in the previous chapter.

In this regard, the report chooses to provide readers with a list of 42 web 'links' (see annex I) where they will be able to find information on 1) the issue in depth and 2) which mentions as succinctly as possible the main themes and the most relevant examples around four main points:

- The status of international human rights instruments in the constitution and domestic legislation
- The consequences of the law on counterterrorism of 10/12/2003
- Civil and political rights
- Economic and social rights.

A unanimous assessment: The degradation of the situation of human rights and freedoms in Tunisia

According to official governmental publications, in particular from the Tunisian Ministry of Justice and Human Rights and the Tunisian Agency of External Communications (TASEC), Tunisia seems to be a haven, an oasis where human rights are of utmost concern to the State, which made the 'essential choice' to promote, protect and implement those rights, a fact that only 'human rights fundamentalists' with 'clearly proven anti-Tunisian motives' would dare to challenge, according to the governmental press.

However, current assessments are almost unanimous on the degradation of the state of human rights and freedoms in Tunisia:

1. All the major human rights organisations[32] and independent Tunisian associations[33]

32 Amnesty International-AI, Cairo Institute for human rights sudies-CIHRS, Christian Association for the Abolition of Torture - ACAT, Committee for the Protection of Journalists - CPJ, Euro-Mediterranean Human Rights Network - EMHRN, Fédération Internationale des Ligues des Droits de l'Homme - FIDH, Freedom House, Front Line, Human Rights Watch, International Commission of Jurists – ICJ, International Observatory for the Protection of Human Rights Defenders, Reporters Without Borders - RSF, World Organisation Against torture - OMCT etc.

33 Ligue Tunisienne pour la Défense des Droits de l'Homme - LTDH, Commission Nationale pour les Libertés en Tunisie - CNLT, Association Tunisienne des Femmes Démocrates - ATFD, Observatoire pour la Liberté d'Edition et de création -OLPEC, Association de Lutte contre la Torture en Tunisie - ALTT, Comité pour le Respect des Libertés et des Droits de l'Homme en Tunisie - CRLDHT, Union des écrivains libres, Syndicat national des journalistes- SNJT, legitimate leadership of the Association des Magistrats Tunisiens- AMT, Commission nationale de soutien aux population du bassin minier, Association internationale de soutien aux prisonniers politiques-AISPP, Association liberté et équité-LE, Observatoire sur les libertés et les droits syndicaux en Tunisie, Union Générale des Etudiants de Tunisie - UGET, etc.

published edifying positions, statements, studies and reports on the state of human rights in Tunisia. There are also numerous accounts, made in Tunisia and internationally, of the increase in abuses of trade union freedoms, which has marked the latest period (2008-2009).

2. The assessment of two major international associations active in the field of governance and the fight against corruption[34] add to these accounts. The word corruption – which refers to a reality experienced by the whole Tunisian population – is considered a taboo in the absence of press freedom and the extreme non independence of the judiciary, which greatly influences the overall climate.

3. The third category of sources and testimonies are the annual report of the US State Department and, more importantly, the reports of the UN bodies and mechanisms. A dozen 'links' give an idea of the number and relevance of objections and criticisms expressed by the UN bodies monitoring the implementation of the covenants and treaties [35], Special Rapporteurs[36] and Working Groups (in particular on arbitrary detention). It is worth recalling that up until today, none of the UN Special Rapporteurs who requested to carry out a visit to Tunisia have been granted an authorization to do so, with the exception of the Special Rapporteur on Freedom of Expression in 1999 (whose report was strongly attacked by the authorities) and the recent visit of the UN Special Rapporteur on the Protection of Human Rights on the Fight Against Terrorism.

Only the monitoring bodies of the 'Convention on the Elimination of all Forms of Discrimination Against Women' (CEDAW), the 'Convention on the rights of the Child' and the 'Convention on the Rights of Migrant Workers' as well as the 'Universal Periodic Review' process of the UN Human Rights Council have made somewhat more nuanced conclusions and recommendations.

Status of the International Human Rights Instruments (IHRI) in the Tunisian Constitution and domestic legislation.

Article 32 of the Tunisian Constitution states that "*Treaties come into force only following their ratification and provided they are applied by the other party. Treaties ratified by the President of the Republic and approved by the Chamber of Deputies have an authority superior to laws.*"

Tunisia adhered to six major UN human rights convention: both Covenants, on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) (1969), the International Convention on the Elimination of All Forms of Racial Discrimination (1967), the Convention on the Elimination of All Forms of Discrimination Against Women (1985), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1988) and the Convention on the Rights of the Child (1992). Moreover, Tunisia signed two UN Optional Protocols, to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts and on the Sale of Children, Child Prostitution and Child Pornography (2000)[37] .

34 « Transparency International » and « Global Integrity »

35 Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee Against Torture

36 Torture, Freedom of opinion and expression, Independence of judges and lawyers, Violence against women, Human rights defenders.

37 Useful references to the reservations made by Tunisia can be found in the document entitled

Tunisia also adhered to the eight conventions of the International Labour Organisation: the two conventions (87 and 98) on the protection of the right to organise and collective bargaining (1957), the two convention (29 and 105) on forced or compulsory labour (1959 and 1962 respectively), the two conventions (100 et 111) on discrimination in respect of employment and occupation (1968 and 1959 respectively), and the two conventions (138 and 182) on the prohibition of child labour and the employment of minors (1995 and 2000 respectively).

Tunisia accepted the 'Cairo Declaration on Human Rights in Islam' adopted in 1990 by the Foreign Ministers of the Muslim countries of the Organisation of the Islamic Conference (OIC). The Declaration is a guidance document which does not require ratification. Tunisia also adhered to the 'Arab Charter on Human Rights' adopted by the Arab Summit in Tunis in May 2004, following its revision in 2003-2004. It also adhered to the 'African Charter on Human and Peoples Rights' (1983) and it ratified the protocol on the establishment of the 'African Court of Human and Peoples' Rights' (2004) [38].

Tunisia submitted its periodic reports to the UN bodies in a regular manner until 1993. However, the report submitted in 2006 to the 'Human Rights Committee' was expected in 1998! The report submitted to the Committee Against Torture in 2010 came more than 11 years late!

Furthermore, it is regrettable that Tunisia still has not ratified neither of the two Optional Protocols to the ICCPR and still refuses to consider signing – let alone ratifying – the Treaty of Rome establishing the International Criminal Court (ICC). The Tunisian authorities fiercely oppose international prosecution based on the principle of Universal Jurisdiction. This is for a good reason: Prosecution was launched in Switzerland against the former Interior Minister and current President of the Senate and Treasurer of the RCD Party Abdallah Kallel[39] , and was abandoned following his flight; and another trial led to the condemnation by French courts in Strasbourg of a policeman accused of torture which was later promoted Deputy Consul in this city[40] .

Since the adoption of the law on 'Tunisia's contribution to the international fight against terrorism and money laundering' on 10 December 2003 (marking the International Human Rights Day), several hundreds of Tunisians three quarters of which under 35 – appeared before the courts under this law, considered as unconstitutional, which lead to serious human rights abuses[41] .

'Arab Human Rights Index' listed in annex I to this report.

38 The OMCT report listed in the annex (OMCT-ALTT-CNLT and ATFD) provides a comprehensive overview of Tunisia's international commitments in the field of human rights (ratification of treaties, initial and periodic reports received and expected by treaty monitoring bodies).

39 Abdallah Kallel was a State Minister, Minister of the Interior during the repression against the unrecognized Islamic party « An-Nahdha » between 1990 and 1993. Complaints were launched against him on the basis of the 'universal jurisdiction' of the convention against torture. Proceedings were launched against him at the end of the 1980s and he could only escape the police by fleeing.

40 See the case of Ben Saïd, fidh.org

41 Among the numerous studies and surveys of this law and its implementation, we would like to highlight: Amnesty International's analysis and monitoring documents; the analysis and report of the CNLT on 'preventive justice and political instrumentalisation'; the survey by CRLDHT and ALTT ; the position statements and monitoring by FIDH, OMCT and Human Rights Watch; position statements by the EMHRN and the three reviews (2007, 2008, 2009) by its working group on

As part of the movement that spread in the wake of the terrorist attacks on 11 September 2001 in New York, Tunisia is among the most vigorous proponents of a judicial policy promoted as 'preventive', whose victims are essentially people suspected of having planned to go to Iraq, Gaza or Afghanistan but who never left the country. In addition to dozens of people charged and condemned to severe sentences as a result, about thirty were condemned in the Islamic jihad insurrection attempt in Soliman (South of the capital) in December 2006 – January 2007[42] , and several hundred young people were arrested on the sole ground of their religious beliefs or their ideological sympathies (through the internet and/or attempts to meet) for the different forms of Islamic extremism and jihad. As a result, the use of torture became systematic as well as the eradication, not of religious extremism, but of the most basic rights to a fair trial.

Civil and Political Rights

Freedom of association

A barometer of all freedoms, freedom of association in Tunisia is strictly restricted, if not denied. The judicial setbacks experienced in the past 10 years by the Ligue Tunisienne des Droits de l'Homme (LTDH), the conditions in which were replaced through force and judicial subterfuge the legitimate heads of the Association of Judges and the National Union of Journalists, and the denial to recognize (or even to accept the submission of the application file) about ten non-governmental organisations subjected to harassment and repression[43] , are clear examples of the strict limitation of this right, which is governed by the undemocratic rule of 'prior authorisation'. Over 3,500 pro-governmental associations (among the 9,600 associations officially registered in the country[44]) have enjoyed this

freedom of association.

42 On 3 January 2007, clashes arose between a large contingent of Tunisian army and security forces a few dozen kilometres to the South of the capital and a group of Islamic jihad insurgents of about thirty people (including their supposed accomplices in other regions of Tunisia). Several Islamists and police officers were killed as a result. The trial that followed led to heavy prison sentences, and for two of the defendants, to a death sentence and execution.

43 CNLT, OLPEC, ALTT, Union des écrivains libres, Commission nationale pour la liberté d'expression et d'information, Comité national de défense des journalistes, Collectif du 18 octobre pour les droits et les libertés, and even occasionally the Tunisian section of Amnesty International, etc.
- LTDH faces paralysing political ostracism and judicial harassment since its 5th congress in 2000, and particularly since 2005. The Tunisian government unilaterally suspended the financial support it had been given by the EU in the Framework of the EIHRD. It was prevented from holding its 6th congress under judicial pretexts that could hardly hide the authorities' intention to asphyxiate it.
The Association of Judges, a professional and corporate body, was the victim of an attempt 5 years ago to eliminate its legitimate leadership. The new cabinet that was imposed faces opposition and the legitimate leadership is persecuted. In particular, four of its members, exemplary judges, are the target of continued harassment and bullying, and part of their fees (up to 75%) is being arbitrarily withheld.
- The National Union of Journalists was created in 2008 and unanimously accepted following negotiations with the first union created in 2006 under the leadership of Neji Beghouri. The bureau was the target of an attack unanimously condemned at the international level. Negotiations with IFJ (International Federation of Journalists) could lead to a new, 'consensual' congress in September 2010.

44 This figure is put forth by the government in the annual budget debates (interior ministry, human rights, justice and social affairs ministry) and by a governmental regulatory body on associations, and is constantly evolving.

right since 1988, whereas only four non-governmental associations have been recognised in the past 22 years.

In spite of the harassment against them, a dozen associations have shown determination and managed to impose a de facto association status to the authorities [45].

Among the thousands of associations and 'community groups' under state supervision, about thirty of those 'Government Organised NGOs – GONGOs'[46] have as a mission to supervise activism, for major GONGOs, and to intervene systematically in regional and international fora to express unconditional support to the government and strongly attack international and national non-governmental organisations[47] .

In a country where Mr. Sadok Chaabane, eminent lawyer and official from the Rassemblement Constitutionnel Démocratique (RCD, the almighty party of President Ben Ali) – learnedly and officially explained that one of the features of President Ben Ali's regime is to 'merge civil society with the State'[48] , it is obvious that room for action for independent groups is strictly limited. Statements and opinions of LTDH, CNLT, OLPEC, ATFD, AISPP, 'Liberté et Equité', EMHRN, Amnesty International, HRW, Front Line, Reporters without Borders and the Observatory for the Protection of Human Rights Defenders – a joint programme of FIDH/OMCT – all give account of the magnitude of harassment against defenders, targeted by the authorities on a daily basis.

Freedom of expression and information

Two opposition weekly and one monthly paper[49] are denied access to advertisement and state subsidies to buy paper (granted to other newspapers), and are dependent on haphazard state-controlled distribution, whose 'malfunctions' are a cover-up for censorship. They compete with about fifty government-controlled publications benefiting from generous publicity through ATCE governmental Agency, and from all kinds of subsidies. In this monolithic landscape of the written press dominated by waffle and conformism, the right to information is an empty shell[50] . The recent acquisition of the

---

45 Conseil National pour les Libertés en Tunisie – CNLT; Observatoire pour la Liberté de Presse d'Edition et de Création – OLPEC; Ligue des Ecrivains Libres; Association de Lutte contre la Torture en Tunisie – ALTT; Association Internationale pour le Soutien aux Prisonniers Politiques – AISPP; Association Liberté et Equité; Collectif du 18 octobre pour les Droits et les Libertés; Observatoire pour les Libertés et les Droits Syndicaux; Amicale des Anciens Résistants; Commission Nationale pour le Soutien aux Populations du bassin minier de Gafsa ; etc. Obviously their precarious status does not exempt these associations from suffering from daily hindrances, slander media campaigns and more importantly recurring threats of repression by the police and the judiciary.

46 "Les défenseurs de l'autonomie de la société civile face aux composantes de la société servile" in the third review (2009) of the EMHRN's Working Group on Freedom of Association (EMHRN website).

47 The 'association tunisiennes des mères', 'association pour l'auto-développement et la solidarité-Atlas', 'association des avocats sans frontières', 'association pour le soutien des victimes du terrorisme', are among the most zealous ones. The 'Association tunisienne des mères ' even obtained ECOSOC consultative status at the UN and played a major role in the constellation of GONGOs accredited to the African Union.

48 See for example his book in Arabic: "The political regime in Tunisia" 2006.

49 Al Mawqaf, Arabic-language media of the Parti Démocratique et Progressiste (PDP), Attariq Aljedid, bilingual media of the At Tajdid Party (the Renewal), and Mouatinoun, monthly bilingual publication of the Forum Démocratique pour le Travail et les Libertés.

50 See the petition signed at the initiative of the 'National Commission for Freedom of Expression and Information' by more than 300 personalities in the worlds of politics, associations, trade unions

'Assabah Group' (so far an unofficial, non-governmental group) by the President's son-in-law was the final touch to the monopoly on the devastated information sector. Faced with this situation, the authorities put forward their decision to remove the obstacle of the 'registration of copyright'. However, preliminary censorship has been reinforced - through pressure on the printers.

Censorship in the publications sector is even stricter, as shown by measures taken in 2009 to lift an embargo on books after 11 years! The Union of Free Writers, working with IFEX (International Freedom of Expression Exchange) and Pen Club International, periodically publishes a list of censored books.

The audiovisual landscape is even more monolithic. Those private television and radio channels (Hannibal-TV and Radio Mosaïque), which have in the past five years been granted the right to coexist with State TV and radio, are strictly controlled by them through a very efficient network of family interests. Attempts to establish independent 'free radios' have so far all been unsuccessful. Arbitrary proceedings launched against 'Radio Kalima' (hosted by Sihem Ben Sedrine), followed by moves to silence it, confirm the repressive intolerance of the state in the field of information, which it considers its exclusive territory.[51]

Internet censorship.

The Observatory on Freedom of the Press, Publication and Creation (OLPEC)[52] , gives an idea of the magnitude of internet policing in the country. More than 300 political and cultural sites are totally disconnected in Tunisia. About a hundred references (names of persons or associations) are systematically censored, including in 'Google' search engine, on 'You Tube' and 'Daily Motion'. Repression and tracking, control and disturbance of the accounts of hundreds of Tunisian Internet users and a strict watch on public cyberspaces are carried out by a formidably efficient administration using the latest technologies.

Slandering campaigns

About ten governmental media are specialised in slander and defamation campaign and threats, including physical, against opposition members and human rights defenders. The sites listed in the annex to this report give account of insults and contemptible accusations against about thirty people who are the targets of such campaigns. This list broadly coincides with the list of the most threatened defenders published in annex X to this report. About twenty complaints registered with the State Prosecutor have not been acted upon, which confirms that these newspapers enjoy impunity.

Gender equality: some progress despite perverse instrumentalisation

Building on progress in the field of women's rights in domestic law made in the years 1960-1990 by the former regime of President Bourguiba (the most progressive Code of Personal Status in the Arab World, effective support to mixed education and promotion of the social role of women), the State made of this issue a major theme of its communication policy. The EMHRN report on Gender Equality in the Euro-Mediterranean region of

---

and culture (tunisnews.net et pdpinfo.org).

51 See statements, carried by TunisNews, from the legitimate leadership of the National Union of Journalists by the National Committee for the Protection of Journalists, on the occasion of the International Press Freedom Day on 03 May 2010

52 As well as position statements and surveys by Reporters without Borders, Committee of Journalists Protection – CJP, IFEX (International Freedom of Expression Exchange) and its 'TMG' initiative on Tunisia, and the International Publishers Association (IPA) mentioned in the annex.

October 2009[53] notes that, in spite of the progress achieved "*discrimination remains present in several laws, including the Personal Status Code (e.g. in relation to inheritance). In addition, the Criminal Law does not criminalise sexual harassment or marital rape, and there is no law on combating domestic violence. Moreover, the Nationality Law states that consent of the father is a condition to pass on nationality. Although the law does not deal with Tunisians' marriage to non-Muslims, a ministerial communiqué by the Prime Minister barred the issuance of marriage contracts between Tunisian Muslim women and non Muslims.*"

Moreover, two independent women's rights NGOs, ATFD (Association Tunisienne des Femmes Démocratiques) and AFTURD (Association des femmes tunisiennes pour la recherche sur le développement), have been the target of relentless harassment by the Tunisian political police.

Non-independence of the judiciary and political trials (opposition members, defenders, trade union members, journalists, students, etc)

Since President Ben Ali came into power on 7 November 1987, followed by the suppression of the State Security Court, several dozen political trials took place in Tunisia of opposition members and islamists, but also of democrats, progressive activists, human rights defenders, trade union members, journalists and students, who were condemned following proceedings all marred by denials of the right to a fair trial. There are an estimated 1,200 to 1,300 political prisoners in Tunisia. Some of them like Mr. Sadok Chourou have been detained for sixteen years. Among the latest people condemned under the law on counter terrorism are the group of the An-Nahdah Islamic party, banned in Tunisia, and about forty trade union activists, left wing radicals and students members of UGET. Beyond the well known non-independence of the judiciary in political trials, the whole Tunisian judicial system (Conseil supérieur de la magistrature (the Judges' Council), the judicial hierarchy and common law courts) is in need of an overhaul in terms of structures and laws, in order to modernise it – steps have already been taken in this respect – and most importantly to guarantee its independence, equity and morality (against corruption) [54].

Torture and impunity

Tunisian Human Rights Associations and all of the major international human rights organisations have continuously denounced the systematic use of physical and psychological torture in police stations, detention and interrogation centres and in the course of the detention of suspects and condemned individuals. Testimonies published in the reviews and studies listed in the annex to this report are serious and telling. The attitude of the Tunisian authorities in the face of those accounts is to systematically deny them and mention, once in a while, disciplinary sanctions or legal prosecution against those responsible for mistreatments, officially dubbed 'excesses'. It seems to be the case in the recent periodic report submitted 11 years late by the Tunisian government to the UN Committee Against Torture (CAT). The report mentions 17 non detailed cases which should be made public. In reality, cases are undoubtedly more numerous, and we are bound to believe that in fact, the number of torturers and those in the security services, police, prison administration or the National Guard who resort to mistreatment and assault is much higher than in the few cases mentioned by way of denying the magnitude of the phenomenon.

We note that in its annual report of 1999, the United Nations Committee Against Torture

53 "L'égalité des sexes dans la région Euro Méditerranéenne: du Plan d'Action à l'action?" http://www.euromedrights.org

54 See EMHRN report 'independence and impartiality of the judicial system in Tunisia' 2008.

expressed grave concerns at the human rights situation in Tunisia, and deplored in particular:

- The lack of definition of torture
- The continued gap between law and practice in the protection of human rights based on evidences of widespread use of torture and abuse by state officials
- Non-compliance with rules on arrest and detention of people in Tunisia, in particular the limitation of time in detention, immediate notification of families, systematic medical examination for all cases of torture and autopsy of all death in detention. Moreover, the Committee notes that arrests are often carried out by individuals wearing civilian clothing and who do not reveal their identity or their function;
- Violence against the families of those detained, including about ten demonstrated cases of sexual violence.

Very few of these numerous recommendations, or of the opinions of CAT (UN Committee Against Torture) regarding a number of cases including violence against Ali Ben Salem, President of the Bizerte section of LTDH and co-founder of CNLT, and the tragic death of Mr Faycal Barakati in a police station, have been acted upon.

Death penalty

Between 1992 and 2008 Tunisia officially ran no death sentence, but neither did it contemplate removing death penalty from its domestic legislation. Tunisia does not oppose the UN Secretary General's qualification of having 'de facto' abolished death penalty in his report on the 62nd session of the Commission on Human Rights. The Association for the Fight Against Torture in Tunisia (Association de Lutte contre la Torture en Tunisie (ALTT)) said that 87 people were sentenced to death. Six more have been sentenced in the first quarter of 2008.

On 20 February 2008, the trial which followed the clashes between security forces and a rebel Islamic Jihad group declared heavy prison sentences, and the sentencing to death of two of those charged.

Beyond the debate on a possible moratorium – de jure and not only de facto – with the risk of 'slow death' of prisoners living in total isolation without any contact with their relatives; the question of the abolition of death penalty is also at issue. A coalition of six associations was formed to this aim in Tunis around the section of Amnesty International, but the authorities, challenging all forms of coordination and networking, hindered its action.

Hegemonic state-party and mock elections

From the early 1960s until November 1981, municipal, legislative and presidential elections were mainly monolithic and held in the framework of the unique party, RCD. The election system, one-round, by constituency and on a majority basis was an obstacle to the official plurality of candidates being actually reflected in the composition of institutions and assemblies. The first experience of plurality was during the legislative elections of 1994. The system put in place – a very complex mix of majority and proportional system, the hegemony of the governmental party RCD on the media during election campaigns and on the organisation of the votes, systematic fraud and a governmental monopoly on the observation of elections led to the emergence of falsely pluralistic parliamentary and municipal assemblies. It translated into 20% of the seats in Parliament being attributed to five parties of the 'legal opposition', with the exception of two members of 'At-Tajdid', and the deliberate marginalisation of two legal parties outside the 'presidential majority'

(P.D.P. and FDTL).

Successive constitutional amendments aiming at increasing the number of candidates in the presidential elections, while excluding those candidates not approved by the state and RCD, and different subterfuges led to the elimination in 2009 of candidates lawyer Nejib Chabbi and Dr Mustapha Ben Jaafar; Mr Ahmed Brahim put forward by 'At-Tajdid' and 'the democratic and progressive initiative' ('Moubadara') was the only candidate able to carry out a campaign, extensively hampered by the authorities. His campaign benefited the connivance candidates put forward against – or rather, next to – President Ben Ali. Free from the constitutional constraints on the limitation of mandates, Ben Ali initiated a fifth mandate with 89.62% of the votes, illustrating the de facto reinstatement of an unlimited presidential mandate, originally introduced in 1975 by President Bourguiba and which was abolished on 7 November 1987.

In order to put an end to mock elections which widen the gap between the 'legal country' and the 'real country', the independent democratic opposition and associations called for an extensive reform of the election law and major amendments, even an overhaul, to the Constitution. They advocated for the creation of an independent National Election Commission and the presence of impartial international observers[55] .

Meanwhile, with the failure to launch on 1 February 2010 'new unity dynamics' for a 'pluralistic and democratic change', the municipal elections of 9 May 2010 led to the confrontation of 260 RCD lists, covering all municipalities, and around a hundred lists of the 'connivance' opposition and a dozen autonomous lists by democrats and progressive groups, supported more or less explicitly by the coalition between 'At-Tajdid' - FDTL – PTPD and independent politicians. The legal Democratic and Progressive Party (Parti Démocratique et progressiste PDP), the unrecognised Tunisian Workers' Communist Party (Parti Communiste des Ouvriers de Tunisie PCOT) - whose spokesman Hamma Hammami has been forced to live underground for about six months, and the islamists from the banned 'An-Nahdah' movement had called for a boycott of the vote.

Lastly, surveys carried out in 2004 and 2009 by an inter-association group supported by international NGOs, on media coverage of the election are worth mentioning. On the occasion of the 2010 elections, ATFD – who had hosted a training course for young women in the feminist university 'Ilhem Marzouki' - has to date bluntly been denied access to the public use of this venue. In this context, ATFD saw two successive payments being frozen on its bank account of a financial grant to 'Ilham Marzouki' University allocated by the 'EuroMed Foundation of Support to Human Rights Defenders' [56] through EU funding. The European Commission is currently examining this 'dispute'.

Rights of vulnerable groups and special needs groups

The conditions are met for a broad consensus on governmental policies dealing with vulnerable population groups whose economic and social integration is essential to all development strategies, but the aim of the RCD to maintain political monopoly hampers the implementation of such consensus.

---

55 See amongst others the proposals by the political parties of the real opposition and those of the 'Collectif du 18 octobre pour les droits et les libertés' mentioned in the report on 'monitoring of media performance during the elections'. This second observation mission of the presidential elections of 25 October 2010 (the first one was put in place for the 2004 elections) was organised with the support of IMS (International Media Support) by LTDH, ATFD, CNLT, SNJ, OLPEC and the Arab Group of Media Monitoring (see IFEX and OLPEC websites).

56 www.emhrf.org

Regarding the rights of the child and people with disabilities, the state party and its specialised satellite associations, under the strict control of the governmental party the almost administrative, state-owned 'Besma association', whose president is the President's wife, and the 'Association of Tunisian Mothers' (Association tunisienne des mères),whose president is very influential in the world of GONGOs in Tunisia and in the African union) have a monopoly position through which they control all initiatives and seize all public and private external funding.

Economic and social rights

During the discussions in 2006 on the latest periodic report of Tunisia before the United Nations 'Committee on Economic, Social and Cultural Rights' on the implementation of the ICESCR, experts and observers focused on eight main themes: the assessment of unemployment and the means to mitigate its effects; the fight against poverty; immigration outside Tunisia; Tunisia's labour policy (collective and sectoral agreements) adopted at the end of the 1950s and the difficulties to maintain it in the context of economic liberalisation encouraged and enhanced by the partnership with the EU; the difficult adequacy between the education system, based on access to education for the highest possible number of people and dominated by general training, and the capacity of the country's economy to absorb additional workers; industrial policies, land use planning and social housing; the degradation of the 'state of business' and the opacity of procurement, the main source of increased corruption.

The answers given by the representatives of the Tunisian state during this session and on the occasion of the presentation in 2009 of the first report of Tunisia to the 'Universal Periodic Review' (UPR) before the United Nations Human Rights Council were in the vein of official communications praising the benefits of '*Tunisia's economic miracle' and the performances of the 'best country in the world in terms of progress in human development indicators since 2000' and 'ranked first in the world in terms of human security* [57] ."

In short, in a country whose proclaimed objective, cited as a credo in the presidential programme (2009-2014) and in the media, where no reservation or serious criticism is tolerated, is '*to improve the living conditions of citizens and their quality of life, individual and collective, while strengthening the middle class representing close to 80% of the Tunisian population, through the guarantee by the Tunisian State of employment, health, housing, education, and social benefits for all Tunisians without exception*[58] ', the limits of a positive and reasonable dialogue are quickly established. In addition, the effects of the 2009 world crisis are routinely being minimised. Although Tunisia did not severely suffer from the direct impact of the financial crisis as its banks did not invest in those financial products responsible for the banking crash, it still suffers, as noted by the Indicative National Plan of cooperation with the EU for the period 2011-2013, from 'the consequences of the global financial crisis (for example on interest spreads and investments) and of course from the global economic crisis which followed'.

References to the degradation of the 'state of business' and the increase in corruption can be found in the report previously mentioned by 'Transparency International' and 'Global Integrity', as well as in cases of unlawful enrichment openly encouraged at the highest level of the state.

57 See http://www.ohchr.org/EN/HRBodies/UPR/Pages/tnsession1.aspx

58 'La Tunisie à l'horizon 2014' communication by Mr Lazhar Dhifi, RCD member of parliament, released in Brussels on the occasion of the 13th Euro Mediterranean Parliamentary days.

The increase in local and sectoral protest movements[59] as well as the emergence of dissident social movements has marked the period 2009-2010. The first such event was the peaceful social protest movement in the Gafsa mining basin (Redeyef, Oum Larayess, Mdhilla) which was violently repressed (arrests, violence leading to the death of three young people, political trials against trade union members and leaders of the movement which were condemned to heavy sentences). In the beginning of the year 2010, similar incidents took place in Skhira (a harbour for oil and chemicals in the South East)[60] . The same 'ingredients' can be found in both movements – in addition to the specific geographical isolation of the mining basin in Gafsa: the denial of a number of basic economic and social rights; the unemployment of graduates (which has long been denied and is currently reaching alarming proportions); nepotism and corruption in the management of placements by so-called temporary work agencies; dishonest compromises by the local trade union bureaucracy; and serious environmental degradation and nuisances.

Tunisia's compliance with its commitments in the field of human rights and democratic principles towards the European Union

On the basis of what was mentioned above, one can hardly conclude that Tunisia fulfils or has fulfilled its international human rights commitments.

In the framework of the regional cooperation with the EU and the Barcelona Process, Tunisia committed in 1995 to respect human rights and fundamental freedoms (including freedom of expression, association, of thought, of conscience and of religion), in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights.

Furthermore, by signing in 2008 the joint Declaration of the Paris Summit for the Mediterranean (13 July 2008), Tunisia committed to '*strengthen democracy and political pluralism by the expansion of participation in political life and the embracing of all human rights and fundamental freedoms*'. By signing the association agreement with the EU, Tunisia agreed that its internal and international policies would be guided by respect for human rights and democratic principles.

In addition, shortly after concluding the association agreement, Tunisia committed, through the ENP Action Plan, to cooperate with the EU on the basis of common values which include democracy, the rule of law, good governance and respect for human rights. It also committed to contribute to the strengthening of reforms guaranteeing democracy and the rule of law, the strengthening of the independence of justice and respect for human rights and fundamental freedoms.

Five years after the adoption of the Action Plan, none of the commitments on human rights and democratic reforms have been implemented. On the contrary, this report shows

59 See the remarkable information work on this issue provided by the Tunisian Observatory for Freedom and Trade Union Rights (' Marsed Al houkouk wal Houryat an-nakabya') on the 'Facebook' social network and elsewhere.

60 See CRLDHT, FTCR, ATF and the 'Commission nationale de soutien aux populations du bassin minier'. The leaders of the movement, gathered around the charismatic figure of Adnène Hajji, were expanded following the release on parole after several month of detention in difficult conditions, but they have not yet recovered their jobs or rights. Two of them, the journalist Fahem Boukadous and the trade unionist Hassen Ben Abdallah were imprisoned following confirmation of the sentences that had been pronounced against them in absentia. Mohieddine Cherbib, then President of the FTCR, was also sentenced in absentia to two years of imprisonment for what is obviously an 'offence of solidarity'.

that the Tunisian authorities systematically and steadily violated most of the rights and freedoms which are part of the EU-Tunisia cooperation, and ignored democratic principles. The Tunisian government showed no intention to fulfil its bilateral commitments.

Likewise, it is impossible to conclude that Tunisia's internal and international policies have been guided by the respect for human rights and democratic principles since the signature of the association agreement.

Therefore, we are bound to conclude this chapter by stressing the fact that Tunisia did not in any way fulfil its commitments towards the EU with regards to human rights.

Yet, in the autumn of 2008, as negotiations were ongoing between the EU and its partners from the South Mediterranean on strengthening their relations, the Tunisian government expressed its intention to deepen its relations with the EU to reach an advanced status ('enhancement'), like Morocco and Israel[61] .

Only 15 months later did Tunisia finally submit the preliminary document on its vision of the implementation of an enhanced status.

Meanwhile, the increasingly authoritarian line followed by the Tunisian government before, during and after the presidential and legislative elections of 25 October 2009 (which gave rise to tensions in the relations between Tunisia and the EU) led to a marked degradation of public freedoms and the situation of human rights defenders. 'Measures' were announced by President Ben Ali "against all those launching accusations or expressing doubts as to the integrity of the election process without providing concrete evidence' The Tunisian President also stigmatised, on the eve of the 25 October 2009 elections, those he dubbed 'a tiny minority of Tunisians who denigrate their country with the support of foreign powers'.

The repressive policy carried out by Tunisia against human rights defenders and independent journalists and associations further intensified. Trials marred by serious breaches of international standards on the right to a fair trial, arbitrary arrests, physical assault, threats, seizure of material and slander campaigns increased.

Lastly, on 15 June 2010, one month after the meeting of the EU-Tunisia Association Council, the Tunisian government adopted a bill to criminalise awareness activities carried out by Tunisian human rights defenders on human rights in the relations between the EU and Tunisia.

The bill seeks to strengthen the repressive character of the provisions of article 61bis of the Penal Code, by subjecting to prison sentence: 'anyone who establishes, directly or indirectly, contacts with agents of a foreign state, or foreign institutions or organisations with a view to damaging the vital interests and economic security of Tunisia'. Those found guilty face five to twelve years of imprisonment (article 62 of the Penal Code on internal security).

Under this article, those human rights defenders who are supported by foreign or multilateral organisations face imprisonment.

---

61 At the meeting of the Association Council between the EU and Morocco on 13 October 2008, a 'roadmap towards an advanced status' was adopted. On 8 December 2008, the EU Council also confirmed its intention to deepen its relations with Israel. As the ENP National Plans of Action (NPA) with Jordan, Tunisia (jointly established in July 2005) and the Occupied Palestinian Territories (OPT) will come to an end in 2010, negotiations on the future implementation of the ENP were imperative.

In his response to interventions by Tunisian Members of Parliament, Mr Lazhar Bououni, Minister of Justice and Human Rights, explained that '*damage to vital interests*' includes *'inciting foreign parties to not grant Tunisia credits, not invest in the country, boycott tourism or undermine Tunisia's efforts to reach an advanced status with the European Union*'.

The question now is how did the EU react to Tunisian policies and practices in the field of human rights and democratic principles, and to systematic breaches by the Tunisian authorities of international law and of the agreements concluded with the EU?

Chapter 3 - Implementation of European Human Rights policies in the relations with Tunisia[62]

After closing the previous chapter by noting that respect for human rights and democratic principles had in no way guided Tunisia's internal and international policies since the signature of the association agreement, and that Tunisia acts in breach of its human rights commitments towards the EU, we now have to assess the response of the European Union to the attitude of the Tunisian authorities.

Did the EU fulfil its human rights commitments as spelt out in the Treaty of Lisbon and in the Association Agreement with Tunisia, and did it act coherently and consistently in its policies and actions towards Tunisia?

In order to answer those questions, this chapter seeks to review a number of essential documents from the EU, the main monitoring and surveillance bodies and the institutions dealing with relations with Tunisia, including 1) ENP review reports; 2) Documents on the EU strategy and National Indicative Programme (NIP); 3) Declarations from the meetings of the association council; 4) EU guidelines on Human Rights and support to NGOs; and 5) the European Parliament.

Action Plan progress reports on the implementation of the European Neighbourhood Policy (NAP-ENP)

We will begin our assessment of the EU approach towards Tunisia in the field of human rights with the review of NAP-ENP progress reports, as they provide the most detailed monitoring by the European Commission - together with the NIP planning documents. Before analysing the content of these reports, we should note that:

- They are annual reports and are supposed to review each chapter of the ENP Action Plan and assess progress and setbacks in the implementation of the Plan.
- The reports do not cover all human rights issues in Tunisia but only those human rights issues agreed upon by the EU and this country in the framework of the ENP Action Plan. The latest progress report of the Commission is careful to mention this fact, noting that 'this document is not a general report on the political and economic situation in Tunisia[63] '.
- It also explains that those documents are 'working documents of the Commission's Secretariat' and as such do not necessarily reflect the EU's official position.
- Reports are drafted on the basis of information from the EU Delegation in Tunis, following monitoring activities and discussions with the authorities, and go through different filters within the European Commission in Brussels: geographic desks, thematic units and political opinions from the hierarchy which also takes into account the sensitivities of member states.

62 In order to limit the size of the report, it was decided not to include in the analysis the EU-Tunisia cooperation on the right of migrants and refugees. An EMHRN report on the protection of the rights of migrants and refugees is due to be published shortly

63 Brussels, 12/05/2010, SEC (2010) 514

In the light of the three latest NPA-ENP reports, we note the following trends:

Year after year, all the reports mention in almost identical terms the very positive results of Tunisia's social policy and women's rights policy:

> *« Economic and regulatory reforms led to important progress which translated into strong growth in the Tunisian economy and in trade exchanges with the EU. Tunisia continued its efforts in the field of social policy, with very satisfactory results in terms of health insurance, school enrolment, poverty, the protection of the rights of women, etc. (2008 progress report)*[64] *. »*

The assessment of civil and political rights is more critical, as we will see first from the 2007 report before looking at the 2008 and 2009 reports.

On the issue of torture, it says:

> *« The law against torture and mistreatments provides that public officials can be prosecuted for violations of fundamental rights. A few dozen people in the security services were prosecuted. However, cases of torture that were not prosecuted have been reported by Amnesty International »*

As regards freedom of association and expression:

> *« The Ligue Tunisienne des Droits de l'Homme, the oldest Human Rights organisation in the region, has been prevented from functioning normally in the past five years.»*
>
> *« Freedom of association and expression still face substantial obstacles, as is the case in the field of media and information. Much remains to be done and a gap still exists between, on the one hand, the legislation in force, and on the other hand the reality observed.»*
>
> *« In 2007, several United Nations Special Rapporteurs called on Tunisia to take urgent and effective action to guarantee freedom of association, assembly and expression, in accordance with the national legislation and international obligations of the country. Recurring tensions have been observed between the authorities and the association or individuals concerned»*
>
> *« Regarding freedom of the media, we observe […] continued pressure on journalists and imposition of content. The Code of the Press has become more restrictive following the adoption of the law on counterterrorism and the foreign press continues to be subjected to registration of copyright. Free access to the internet and its content remains a problem.»*

64 In the 2007 report, the Commission states that "economic, social and regulatory reforms registered important progress and translated into a strong growth of the Tunisian economy and trade exchanges with the EU (2007)… The situation of women and the protection of the rights of women remain very satisfactory". The 2009 report reads "Economic and regulatory reforms registered important progress and translated into a strong growth of the Tunisian economy and trade exchanges with the EU. Tunisia made continuous efforts in the field of social Policy, and results in terms of health insurance, school enrolment, poverty, the protection of women's rights, etc. are very satisfactory."

As regards the fight against terrorism:

> *« Civil society denounces restrictions of fundamental rights of the legal defence and freedom of expression under the law on counterterrorism of 2003, and the lack of transparency in security measures taken by the government. »*

As regards corruption:

> *"The evolution of the corruption perception index is of concern, and although the authorities do not seem to consider it a problem, it creates an obstacle to the expansion of private investment. »*

The 2008 progress report mentions that the sub-Committee on Human Rights set up under the association agreement between the EU and Tunisia has started its work and held one meeting. We note that:

> *« LThis meeting has not been followed by any concrete results in terms of respect for human rights in the country. »*

Also, the 2008 report highlights continued gaps in the judicial and criminal systems, and note that the observation of several trials in Tunisia in 2008 showed that, in a number of cases, legal rights and procedures have not been respected in practice.

The report mentions abuses against detainees and complaints of torture that have not been followed-up, difficulties in freedom of expression and free access to Internet content. Concrete and daily application of guarantees of freedom of association and participation in political life still faces many obstacles. Lastly, the level of perception of corruption between 2007 and 2008 has been almost constant.

The report also mentions that "the Association Council met in November and Tunisia expressed its interest for an enhanced partnership in the spirit of the 'advanced status' put in place with Morocco." Surprisingly, the report states "the EU expressed its readiness to work concretely towards it in 2009."

The 2009 report is broadly along the same lines, although it uses even more diplomatic terms than the previous reports. It elaborates on the presidential elections, presented as the major political event of the year, and asserts that:

> *« The conduct of the campaign and the elections did not allow opposition candidates to enjoy normal visibility and showed that there are still shortcomings regarding the openness of public debate and freedom of expression for civil society representatives, in particular human rights defenders and journalists. There is a persisting gap between official positions of support to fundamental freedoms and respect for human rights and the implementation of the law in practice. This gap was even more visible during the elections.»*

The report also notes that the objectives set in the Plan of Action concerning freedom of association and expression have not been achieved; reform of the justice system remains a necessary challenge to sustain the rule of law; with regards to the fight against corruption, the report mentions that no significant event has been observed since 2008; freedom of expression and freedom of the press are still being impeded; free access to the internet remains a problem, and it is difficult to maintain regular contacts with representatives of the independent civil society. Moreover, it is difficult to establish a constructive dialogue with the Tunisian authorities on this issue.

The 'Human Rights' sub-Committee did not meet in 2009, as the Tunisian authorities kept postponing its work because of the tensed political crisis which preceded and followed the presidential elections.

However, discussions on Tunisia's request for a higher status continued, albeit with less enthusiasm than in the previous year:

> *« In 2008, Tunisia expressed its intention to deepen its relations with the EU. Proposals in this regard were received after the period of reference. The strengthening of relations in the framework of the advanced status implies further binding commitments for the parties in all areas, in the field of law and governance and as well as in economic, trade or social areas.»*

The progress reports clearly show that the European Commission, and thus all of the European institutions and Member States, are aware of the human rights situation in Tunisia and the lack of compliance with its commitments, even though they are formulated in diplomatic language. It would have been desirable for working documents to contain proposals on which steps or recommendations should be taken to remedy this situation, rather than suggest to go ahead with the project of granting advanced status to Tunisia, as was the case in 2009 (although the 2010 report – drafted at times of tensions between the EU and Tunisia – is less openly favourable to this idea).

Indicative National Plans (INP), in the framework of the ENPI.

INPs are technical documents on the basis of which the EU translates its cooperation and dialogue with third parties into financial assistance.

INPs are based on strategic documents which currently cover the period 2007-2013, in which the European Commission analyses the situation in a given country and reviews the projects and programmes agreed upon with the country's authorities for which financial assistance would be granted. Funding is allocated for the period 2007-2010 and a new document will be drafted for the period 2011-2013.

INPs are prepared by the Commission's secretariat, but the States concerned are consulted beforehand and funding can only be allocated with the agreement of local governments. The EU Member States are also consulted in the framework of ENPI management committee composed of representatives of the Commission and Member States.

INPs, just like ENP-NPAs, are not intended to deal with all human rights issues in Tunisia. In fact, the EU has never published a report dealing with the complete human rights situation in Tunisia, nor in any other country, which is regrettable. EU delegations must submit to Brussels internal reports on the human rights situation in different countries, and their report must be agreed upon by the embassies of the EU member states in the countries concerned, but these reports are never made public. The EMHRN did not have the opportunity to study confidential internal reports on Tunisia.

The 2007-2010 INP is very similar to the ENP-NPA regarding the analysis of the situation of human rights in Tunisia, as shown in the following excerpt from the 2007 strategic document:

> *« The Constitution provides guarantees on democracy and freedom of association, but in practice a number of factors continue to restrict the development of political pluralism in Tunisia (…). The foundations of an independent judiciary are laid down in the Constitution. However, the Supreme Judicial Council and*

the Public Prosecutor's Office remain heavily under the influence of the Executive. The principle of irremovability has never been established and judges may be transferred at any moment. The Lawyers' Association nevertheless manages to maintain a degree of independence from the Executive even if it cannot always guarantee the rights of defence (...)»

This document is the only official document from the Commission for the period under review that mentions the existence of political prisoners in Tunisia:

« On several occasions international observers and specialist NGOs have drawn attention to the conditions in which prisoners are held (including solitary confinement of political prisoners). »

Regarding public freedoms, the document says the following:

« Article 8 of the Tunisian Constitution guarantees the freedoms of opinion, expression, assembly and association. Notwithstanding these constitutional guarantees, observers have noted serious obstacles to these freedoms in practice (...) International observers and organisations have regularly condemned harassment of human rights defenders and have highlighted the need to guarantee freedom of opinion and freedom of expression in the fight against terrorism. »

« As regards corruption, Tunisia is ranked 43rd in the world in 2005 according to Transparency International.»

Building on this analysis and other, the document later provides a summary of the challenges in the years to come: :

« One of the undertakings by Tunisia and its Euro-Mediterranean partners in the Barcelona Declaration was to respect freedom of expression and to guarantee its effective and legitimate exercise. The Association Agreement also treats this freedom as a fundamental component of Euro-Tunisian relations. Real progress in this field as provided for in the Neighbourhood Action Plan will be of crucial importance, including for the maintenance of strong, sustainable growth, which needs an environment conducive to democratic transition that tends to favour consultation with civil society and the private sector, to respond to their aspirations and to allow freedom of expression and association. It is also vital to consolidate the rule of law so as to provide guarantees which inspire confidence in citizens and economic operators. This development is crucial if there is to be more dynamic governance in a more open environment.»

With this analysis in mind, it is surprising that all existing programmes focusing on democracy, human rights, the rule of law and good governance will come to an end because of the difficulties met:

"In view of the serious difficulties in implementing third-generation MEDA and EIHRD projects (Media: difficult implementation; justice: long negotiations; NGO project: cancelled) and the problems surrounding the recent launch of the justice support programme, the Commission takes the view that efforts over the NIP period 2007-2010 should focus on good economic governance.»

Out of the €330 million allocated, no funds are set aside for the promotion of human rights and democracy, and there is no project or programme proposal on this issue for

2007-2010. The programme on justice, finalised in 2007 after three years of negotiation, is the only initiative linked to human rights [65] .

However, the programme on justice, which was initiated in 2007, consists of supporting modernisation of the justice system and focuses on training, streamlining and reorganising the justice system and its methods of work. The programme allocates €22 million, but is restricted to 'technical' activities (computerization, training and creation of the Institut supérieur de la profession d'avocat (Higher Institute of the Lawyer Profession) – ISPA) and does not touch upon the essential issue of transparency and the independence of justice raised by the European Commission.

Ultimately, the promotion of human rights and democracy disappears into a formula on the horizontal integration of EU programmes and is not specifically mentioned:

> *"As in the previous programming exercise, the need to reduce gender inequality is an issue which the Commission will focus on when appraising cooperation programmes (…) Good governance, human rights (…) are other cross-cutting issues which feature in all programmes. »*

In 2010, the EU adopted a follow up NIP to the 2007-2010 NIP. This new document seems to be much more positive than the previous NIP and the ENP-NPA progress reports:

> *«The implementation of the Plan of Action has been overall positive. Noticeable progress has been made in the economic, social and sectoral chapters. As to the political chapter, it should be noted that sustained dialogue took place in the framework of the activities of the Association Council and the monitoring structures under the Plan of Action, in particular the sub-Committees on 'Human Rights and Democracy' and 'Justice and Security'. Progress needs to continue to ensure symmetrical development with the entire Plan of Action. ».*

No mention is made of corruption in the country (or of political prisoners); Tunisia is considered a good partner in the management of regular and irregular migration flows. No mention is made of the fact that Tunisia faces serious shortcomings in terms of democracy. Tunisia is now considered as:

> *« A Republic with a strong presidential system. Pluralism is guaranteed in the Constitution. The Rassemblement Démocratique Constitutionnel won a wide majority of votes in the elections of October 2009 and so dominates political life in Tunisia. In the presidential elections of October 2009, President Ben Ali was re-elected with 89.26% of the votes. »*

It is mentioned, without any further comment, that:

> *« The government ascribes prime importance to the need to guarantee economic and social rights as a prerequisite to European style parliamentary democracy. Political stability is characterized by the strong presence of state structures and party in political life and the life of trade unions, in the media, communication, culture and the life of associations. »*

The EU confirms that it does not intend to impose programmes or projects focusing on human rights:

65 EU cooperation programmes, annex 7 of the Strategic Plan, 9/1/05

> *« The implementation of programmes on the rule of law, human rights and democratic governance fell short of its potential, and it is essential to continue work in this regard based on the implementation of concrete and realistic activities.»*

The main concern for now is to move towards an advanced status for Tunisia. Human rights and democracy are 'not exactly forgotten', but will have to wait:

> *In the current context of relations between the EU and Tunisia, the main objective is to strengthen political dialogue, in particular with a view to moving relations towards an 'advanced status'. The choice of the Commission remains to engage with the country in order to support reforms to promote further progress in the field of democracy, human rights and governance.*

Following this analysis, a 'memorandum of understanding' on the 'National Indicative Programme – NIP' was formally signed on 30 March 2010 by Commissioner Stefan Füle (Enlargement and ENP) which provides funding of €240 million for 2011 – 2013, to which are added mid and long term pledges of around $900 million announced by the European Investment Bank (EIB) on 15 March 2010.

None of this funding is allocated to projects on human rights.

Declarations from the meetings of the Association Council

The declarations made in the framework of the AC meetings at the ministerial level provide an assessment of the bilateral relations between the EU and Tunisia at the political and diplomatic level. The declarations are adopted by the Council, the highest political body for EU foreign relations, which represents the position of its Member States.

The declarations on Tunisia are usually written in optimistic terms, when it comes to assessing the relations:

In 2007, the European Union appraised:

> *«"[...] the commitment by the Tunisian authorities to promote social and economic reforms with a view to modernising and developing the country. In the EU's view, the efforts carried out brought the country's development to the highest level in the whole Maghreb region through the improvement of the living conditions of the Tunisian population. Progress made in several areas are encouraging, in particular regarding freedom of religion, advanced status for women, the important decrease in poverty and illiteracy rates among young people, which puts Tunisia in a leading position in the region. The EU encourages Tunisia to continue its efforts in this regard .[66]»*

The paragraph on women, poverty, etc. included in every progress report is carried word for word in the following AC declarations. In addition, they state that:

> « The European Union welcomes the holding on 12 November 2007 of the first meeting of the sub-Committee on 'human rights and democracy' which set up the first structured dialogue in this area. ».

66 Council of the European Union, 14910/2007

The declaration diplomatically notes that:

> *« Measures which are not in conformity with respect for human rights are still being taken, in particular in the field of freedom of expression and association […] In this context, the European Union pays special attention to any effort to promote a truly pluralistic democracy, which allows all components of civil society to have full and unfettered access to public life, and strengthens the rule of law. This also implies that human rights defenders should be allowed to freely carry our their activities.»*

As regards the justice system, it vaguely recalls that:

> *« Free exercise of the profession of judge and lawyer is essential to strengthen the rule of law.»*

In its 2008[67] declaration , the EU reiterates that:

> *"The EU notes with satisfaction the increased commitment of Tunisia in the European Neighbourhood Policy and welcomes the intention expressed by Tunisia to deepen its relations with the EU, as demonstrated by the submission on 19 March 2010 of its proposal to reach advanced status. The perspective of advanced status reinforces progress made by Tunisia in the implementation of the Association Agreement since its entry into force in 1998, and of the Plan of Action under the European Neighbourhood Policy.»*

The EU encouraged the Tunisian government to strengthen its efforts towards good governance and political reforms to promote pluralism and reinforce the rule of law, and noted that this implies the possibility for human rights defenders to carry out their activities in an unfettered way and through respect for freedom of expression and association. The EU again welcomed the constructive climate in the sub-Committee on 'Human Rights and Democracy', which met on 17 October 2008, where all issues could be discussed with an important high-level delegation.

Lastly, in 2010[68] :

> *« L'UE note avec satisfaction l'engagement accru de la Tunisie dans la Politique européenne de voisinage et se félicite de la volonté tunisienne d'approfondir ses relations avec l'UE, telle que manifestée par la présentation le 19 mars 2010 de sa proposition pour parvenir à un statut avancé. La perspective d'un statut avancé vient renforcer les progrès importants accomplis par la Tunisie dans la mise en œuvre de l'Accord d'Association, en vigueur depuis 1998, et du Plan d'action de la Politique européenne de voisinage. »*

However, the EU diplomatically underlines that:

> *« Deepening relations should be an opportunity to seek a better balance between progress in economic and social development on the one hand and progress in the consolidation of the rule of law on the other hand. The protection of human rights and fundamental freedoms, as well as the consolidation of the rule of law are fundamental pillars of the EU-Tunisia partnership. The EU underlines that an advanced status goes hand in hand with stronger commitments by both parties.*

67 Council of the European Union, 14844/ 08

68 Council of the European Union 9143/10

In this context, it encourages the Tunisian government to intensify its efforts in the field of reforms, in particular on pluralism and democratic participation, the independence of justice, freedom of expression and association, and the protection of human rights defenders.»

EU Guidelines on Human Rights and support to NGOs.

As mentioned above, in its 'Human Rights Guidelines', the European Union undertakes to intensify the mainstreaming of human rights and democratisation objectives in all aspects of its external policies.

The EU Delegation in Tunisia and the relevant units of the RELEX Directorate General in Brussels submitted, between 2005 and 2007, at least two internal documents on a 'European Union common strategy for the support of human rights defenders'. The two documents, considered confidential, and which are still relevant today, were discreetly 'buried' under joint pressure of Tunisia and some influential Member States.

In the framework of the implementation strategy of the 'Guidelines on Human Rights defenders', the EU delegation in Tunis concretely considered setting up a 'Working Group on Defenders'.

As the Spanish Presidency put on its agenda the systematic establishment of such bodies and their strengthening through the appointment within the 'EU Delegations' of 'liaison officers' on human rights, the first meeting in Tunis of the 'Working Group on Defenders' was scheduled to take place on 15 then on 22 April 2010, on the occasion of a meeting with a group of eight people which the delegation had met several times on an informal basis. The group was composed of representatives of LTDH, ATFD, AFTURD, CNLT and ALTT, as well as three people on an individual basis, Khemaïs Chammari, honorary member of the EMHRN, Mohamed Abbou, a lawyer, and Rachid Khechana, chief editor of the weekly paper 'Al Mawqif'.

Unfortunately, during the meeting, which was extended to Member States (12 participants), the Head of the EU delegation merely confirmed the idea to set up a 'taskforce working group', but considered that 'gradual evolution' would take time.

In reality, according to information obtained during research and preparation for this report, Tunisia was joined in its official reluctance by those Member States most influential and supportive of the Tunisian government[69] .

In addition, most of the Member States from Eastern Europe represented in Tunisia adopted a cautious observer attitude.

It has not been possible until now to further structure and extend the 'group of eight', or to organise meetings with the representatives of the 'delegation' in the offices of member associations.

Also, no consultation took place on the programme of support to the modernisation of the justice system, an issue of concern to defenders.

---

69 In this regard, the attitude of the Spanish embassy in Tunis is problematic: not only did the embassy deliberately refrain from having any contacts with defenders, despite assurances given by the Spanish Foreign Ministry, but the Ministry's representative sent to Tunis for the session of the Human Rights 'sub-Committee' (25 February 2010) did not take part in the consultations held on 24 February with the 'group of 8', which met with the delegation from Brussels in the EU Delegation's headquarters, and there was no representative of the Spanish embassy there.

Lastly, the question of the systematic presence of observers from EU Member States and/or the EU Delegation in Tunis at political trials (opposition members, trade union members, defenders, students) is an urgent one, as it fits within the implementation of the 'EU Guidelines'.

NGO funding

As we have seen, there are more than 9,600 recognised associations in Tunisia, among which less than thirty escape direct control and supervision by the State. For all the others, 'candidates' to the post of president or key executive positions in state institutions are designated (or approved/confirmed) by central and/or regional authorities of the State and the governmental party RCD.

For instance, during the third session of the EU-Tunisia 'human rights' sub-Committee, Tunisia highlighted the issue of promoting the integration of former prisoners, in this case former 'common law' prisoners, who increasingly repeat offences. Strangely, in addition to the role played by the State, it also highlighted the role of an association presented as 'exemplary' and 'who deserves the strong support of International Cooperation'. Now, this association, established on 25 January 2008, is a quasi-administrative structure, headed by a businessman, former senior civil servant and former member of the executive office of the Tunisian Union for Industry and Trade (UTICA), the employers' organisation in which all the members of the executive office are members of the central committee of the government party RCD. Its Secretary-General is a lawyer and a former member of the bar association (Conseil de l'Ordre) and a strong figure within the lawyers section of the RCD. This association benefited from the active support of the authorities (spacious offices, subsidies and secondment of civil servants).

The European Union is, as we said, aware of this situation. In October 2005, a restricted document of the European Commission ('EU fact sheet on human rights in Tunisia') focused on this issue and three years later, the unpublished document 'European Union joint strategy on supporting human rights defenders in Tunisia' noted a "gap between a developed institutional and legislative framework and practice which departs from it, in particular regarding room for manoeuvre of human rights associations.'

The document also highlights the following issues:

- Rejection by the Tunisian authorities of diplomatic steps in the field of human rights;

- Difficulties to visit the offices of human rights defenders and attend public meetings organised by them, even for diplomats, when the meetings are not authorised;

- Freezing of EU funding to independent associations, in particular funding allocated in the framework of the European Initiative for Democracy and Human Rights.

The obsessing issue of international funding, including EU funding, comes to our mind. Several dozen governmental associations benefit from international funding, but since 2003-2004, associations which are not of strict allegiance to the government have been imposed a new administrative procedure, which obliges them to seek authorisation from the Interior Ministry and the Central Bank, and which aims at denying them such funding.

First, the Ligue Tunisienne des Droits de l'Homme (LTDH) and then the Institut Arabe des Droits de l'Homme (Arab Institute for Human Rights) faced such denial of funding. The Association des Femmes Tunisiennes pour la Recherche et le Développement (AFTURD), and the Association Tunisienne des Femmes Démocrates (ATFD) in turn faced the same arbitrary treatment regarding several partnership projects (Tunisia-Italy, Tunisia-Germany and Tunisia-Spain); the latest such measure is the freezing of funds transferred to ATFD by the EuroMed Foundation of Support to Human Rights Defenders (headquartered in Copenhagen) in the framework of European funds under EIHRD.

We have to admit that the European Union finally accepted this arbitrary and discretionary state of affairs, after diplomatic steps and statements failed to yield any result

The European Parliament

The Parliament is the democratic supervisory body of the Union: it has a power of codecision on budget matters and the right to censure the Commission through a two-third-majority motion. It also supervises the daily management of common policies by putting oral and written questions to the Commission and Council composed of Member States. The President of the European Council informs the Parliament of progress made by the institutions. Finally, the EP's internal regulations govern the organisation of public debates (like the one held on 21 January 2010 on the relations between the EU and Tunisia) and the submission and vote of 'emergency resolutions' on specific country situations, events or themes.

The European Parliament is an elected body, but it has little power to influence the EU's decisions in the field of foreign policy. To a certain extent, it is free from intergovernmental politics. This is why it is the favoured counterpart for human rights defenders, but it remains under pressure of the Tunisian pro-governmental lobby, which seizes every opportunity to uphold the country's image.

For instance, and as a single example amongst others, the Delegation of the European Parliament for relations with the Maghreb countries and AMU adopted last year initiatives that led to tensions and discontent, including among members of the 'Delegation' and within 'Parliamentary Groups'.

Less than four months after a meeting of the Delegation with the Maghreb countries which took place on 3 December 2009 and confirmed the limits of the dialogue on human rights and political reform with the Tunisian authorities, who were represented by a large parliamentary delegation (RCD and enslaved opposition) chaired by the Tunisian Ambassador to the EU; a sort of resit session was organised on 23 March 2010, on the eve of the 'thirteenth inter-parliamentary meeting "European Parliament – Tunisian Parliament".

Most worrying in this episode are the conditions in which these two meetings were held, heightened by the presence of the Director of the Relex Directorate-General of the European Commission and the President of the Foreign Affairs Commission of the European Parliament.

Information on the two meetings and their agenda was indeed only made public five days prior to the meeting, although the importance of the official Tunisian delegation and the apologetic documentation submitted and released on this occasion clearly demonstrate that the event had been planned for a long time. A media outlet from the Tunisian democratic opposition covered the meetings ('At-Tariq Al Jadid') and considered, justly, that they had been "prepared on the sly".

But beyond the 'shortcomings' deplored by several members of the 'Maghreb Delegation'

and of the 'Foreign Affairs Commission', the assessment of the relations between the European Parliament and MEPs, and international (FIDH, REMDH, AI, HRW, OMCT) and Tunisian NGOs was overall more positive than with other European institutions.

Between 1996 and 2006, seven urgent resolutions were adopted by the EP, even though it is often difficult to gather the support of some political group)[70] .

A quick review of the dozen written and oral questions[71] asked by MEPs in 2008 and 2009 on the human rights situation in Tunisia, and of the Commission's answers, through Ms Ferrero-Waldner and later Ms Ashton (2010), confirm the interest of the European Parliament for this ongoing issue.

They are, regrettably, not systematically 'connected' to the steps taken by the European Council (bout ten informal steps were taken in 2008-2009) on similar issues in the framework of the implementation of the 'EU Guidelines'[72].

It is also truly regrettable that the discussions of the meetings of the human rights sub-Committees for EU and Tunisia are deemed confidential, and that they cannot be raised before the bodies or during debates at the European Parliament.

70 23 May 1996, 15 June 2000, 14 December 2000, 14 March 2002, 29 September 2005 and 15 December 2005 (prior to and following the World Summit on the Information Society – WSIS held in Tunis in October 2005), 15 June 2006 (EP website)

71 See the website of the European Parliament.

72 See the website of the 'Council'.

Conclusions

> *« Ben Ali sought to hide the authoritarian stamp of its own regime by appearing before the international community as a champion in the fight against jihad, and as a defender of the rights of women, while exploiting for its own benefit in a clever manner the gap between Tunisia and its neighbours in this field. This simple strategy has so far been so successful it turned the Tunisian regime into one of the world's most discreet dictatorships in the world. Complacency towards Ben Ali's regime through highlighting selected economic successes that are in fact relative, will not contribute to solving the serious problems faced by Tunisia and other countries in the Maghreb; such condescension is only an absurd and foolish means to further aggravate them, as illustrated by many precedents throughout the world.* [73]»

The Euro-Mediterranean Partnership established long term objectives (area of peace, shared prosperity, cultural dialogue) in a regional and multilateral framework, but also most importantly "*a mid-term objective (a free trade zone based on the conclusion of bilateral agreements between the Union and each of its partners in the South) which requires economic reforms by partner countries. In the economic field the Union sought (as globalisation appears to be a fundamental variable in the evolution of the EU's economic relations with its Mediterranean neighbours) to play the role of a structural power, setting the rules of the game and the structure in which it will expand its relations with its neighbours in the South*[74] ."

The outcome of the ENP in the essential field of the economy is a rather mixed one, considering – in addition to the impacts of the deadlock in the conflict between Israel and the Arab world and of the Iraqi occupation, which fuelled opposition in a number of countries in the East and South Mediterranean region – the uneven level of commitment in the Partnership. Tunisia, Morocco and to a certain extent Jordan formed the group of 'partners convinced by the Euro Med approach' and its economic, legislative and parliamentary consequences; Tunisia being – undoubtedly – the 'preferred partner' in the process.

Assuredly, it is thanks to Tunisia feeling well-disposed and the important geopolitical role it is thought to play in the field of security, the management of migration flows and the containment of Islamic extremism, as well as the interests in Tunisia of influential EU member states[75] , that Tunisia was able, in spite of the nature of its regime, to repeatedly express reservations towards the 'logics of shared values' without creating major tensions. Not for fear of 'Europeanization' – a concern of every proponent of national order in the region – but for fear of the destabilizing impact of the political reforms which would flow from the implementation of those common values.

Supported by facts and statements, the EMHRN tried to analyse in this report the policies

---

73 Editorial from El Pais dated 28 October 2009, in the Wake of the election on 25 October 2009: 'Discreet dictatorship: President Ben Ali dwells at the head of the country through the use of the weapons of absolute power.' Carried by « Courrier international ». (Translated into French by Abdelatif Ben Salem)

74 « The EU and its Mediterranean neighbourhood » by Esther Barbé in « Les banlieues de l'Europe » 2007, Sciences Po, Les Presses.

75 A number of well-informed persons met at the time of drafting this report underlined the unconditional attitude of Spain, France and Italy towards the Tunisian government, and efforts to block any intention by the Union to reconsider – even just to add coherence with reference texts and better fit the current situation – the modalities of its cooperation with Tunisia.

of the different European Union institutions with regard to the human rights situation in Tunisia. This has led to a three-fold conclusion:

The first conclusion is the degradation of human rights in Tunisia. This is a conclusion almost unanimously adopted by International Non Governmental Organisations (INGOs) and specialised bodies of the United Nations, in spite of the indignant denials of the representatives of Mr Zine El Abidine Ben Ali's regime.

The second conclusion is that there is an 'information gap' within the institutions, mechanisms and policies of the Euromed Partnership. This information gap can only be progressively filled once the Tunisian authorities will have the political will to do so, and when concrete measures will be adopted on the European side: systematic joint press briefings and press conferences on the outcome of bilateral meetings, visibility of the documents containing the EU's undertakings, reorganization of the websites of the EU Commission and the EU delegation in Tunisia, etc.

The third conclusion is that there is an 'implementation gap' in the EU's commitments in the field of human rights, the rule of law and democracy in its relations with Tunisia. We will conclude by dealing with this issue to try to answer the questions mentioned above, namely:

- Did the EU comply with its own human rights commitments in its relations with Tunisia, as spelled out in the Treaty of Lisbon and the Association Agreement?

- Did the EU act consistently and steadily in its relations with Tunisia with regard to the commitments it made within the framework of the ENP and reference texts and strategic guidelines on human rights?

As regards the first question, we can conclude that the EU infringed on its own human rights commitments under treaties and other international instruments.

As observed in the analysis of the EU Declarations, the EU stated and promoted its human rights values and, to a certain extent, tried to contribute to the protection of human rights in Tunisia. In its declarations, reports and programmes, it reaffirmed these values.

According to information obtained in preparation for this report, the EU also approached Tunisia in a confidential manner a few times on a number of human rights issues.

In 2010, the EU got used to the idea that Tunisia 'attaches the utmost importance to the need to guarantee economic and social rights as a prerequisite [emphasis added] to 'European-style parliamentary democracy' (sic!)', but it was careful to clarify that the Commission's choice was to pursue its engagement in the country to promote reforms with a view to improving democracy, human rights and governance, even if this would come 'later'.

The EMHRN considers that the EU declaration and report could have contained much stronger language, considering the blatant human rights violations and breaches of commitments towards the EU by the Tunisian authorities. However, the Commission and Council were careful not to put themselves in a situation where it could be argued that respect for human rights and democratic principles does not guide the EU's relations with Tunisia. The EU thereby 'kept its hands clean'.

However, it is impossible to conclude that the EU acted in a coherent and consistent way in its relations with Tunisia with regard to the commitments made under the ENP and in

reference texts on the implementation of its external policy in the field of human rights.

An analysis based exclusively on official EU documents is enough to demonstrate the lack of consistency in the EU's approach:

The progress reports of the European Commission stress the fact that "*there is a persisting gap between the official positions of support to fundamental freedoms* [by Tunisia] *and respect for human rights and the implementation of the law in practice*", while the NIP document of 2010 notes, with no particular qualms, that "*the government attached the utmost importance to the need to guarantee economic and social rights as a prerequisite to European-style parliamentary democracy*."

On the one hand, the EU stated in the 2010 Declaration on the Association Agreement, that the deepening of the relations between the EU and Tunisia should be an opportunity to achieve a better balance between progress made in the field of economic and social development and progress in strengthening the rule of law, and that an advanced status requires further commitments by both parties, which implies that economic and social reform should be accompanied by political and human rights reform, and on the other hand, in the 2010 programme document, the Commission states that its choice remains to engage with the country with a view to achieving progress at a later stage [emphasis added] on democracy, human rights and governance.

It should also be noted that in the 2007 strategy document, the issue of Tunisia's political prisoners is raised once, and is not mentioned in any subsequent documents. The corruption phenomenon is mentioned in each progress report by the Commission, but does not feature in any of the Declarations of the AC meetings from 2008 to 2010.

It is also striking to observe the disconnection between the design and implementation of the 'justice' programme and the human rights concerns mentioned in the reference documents cited above.

Also, it is obvious that the guidelines on human rights defenders were not implemented as thoroughly as they could have been.

Lastly, it is important to mention the lack of reference to human rights in the Commission's projects and programmes, but also – more surprisingly – in the field of corruption or environment policies. Furthermore, there is no link between the Human Rights sub-Committee and two other sub-Committees which are also dealing with human rights, the rule of law and gender: the sub-Committee on 'justice' and the sub-Committee on 'social affairs and migration'.

Additional elements of inconsistency lie with the European Parliament. The Commission and Council do not involve the Parliament in a serious manner in the ENP process, even though it is directly concerned as it votes the ENP financial instrument. Members of Parliament do not have access to confidential documents or to the minutes of the debates of the 'human rights' sub-Committees and only have the power of 'scrutiny' on 'Indicative National Programmes – INPs'. As a consequence, on 'sensitive' political issues, members of Parliament are reduced to either keeping uneasily silent, or asking questions or adopting strong 'urgent resolutions', which run the risk of being disavowed by the Commission's assessments.

Not only can we conclude that the EU's policies and attitude towards Tunisia is marred by inconsistency, we can also conclude that it is incoherent. The most patent example is given by the implementation of the ENP.

As mentioned in Chapter 2, the EU's activities under the ENP are based on a differentiated approach, positive conditionality and financial incentives.

The EU's official method was to define, in consultations with Tunisia, a number of priorities whose implementation should lead to the deepening of shared values. The EU special relationship with Tunisia is meant to be based on mutual undertakings in favour of shared values in the field of the rule of law, good governance and respect for human rights, following which the provision of new benefits would depend on progress made in the implementation of reforms in partner countries.

Therefore it is extremely clear that in the ENP, the level of ambition in the relations between the EU and Tunisia should take into account to which extent human rights values are actually shared.

The EU decided to allocate, for the period 2011-2013, €240 million worth of incentives, in addition to the $900 million mid and long term pledges announced by the European Investment Bank (EIB), which expressed satisfaction regarding the "*excellent cooperation with this very good partner*[76]" . This despite 1. Successive yearly progress reports released by the European Commission within the framework of the ENP which repeatedly pointed out no significant progress had been made on the human rights areas covered by the association agreement and ENP Action Plan with Tunisia, 2. The freezing of the EIB subsidies to Tunisian Human Rights NGOs under EIHRD and, lastly, 3. The Commission's failure to report any concrete outcome from its dialogue on human rights with the Tunisian authorities. We can legitimately say then that, since 1995, the EU played a key part in maintaining the current regime in power.

In spite Tunisia's complete failure to meet it's commitments towards the EU in the field of human rights and democracy, as demonstrated in our analysis and in the EU reports, the EU expressed it readiness since 2008 to work towards an advanced partnership with Tunisia, noting that an advanced status would strengthen the important progress made by the country in the implementation of the Association Agreement and the Plan of Action of the European Neighbourhood Policy [77].

There are several reasons explaining the EU's inconsistent policies and behaviour towards Tunisia: the difficulty to sustain dialogue with a regime that is not ready to make concessions in the field of human rights; intense lobbying by the Tunisian regime in the EU and Member States institutions; as mentioned before, Tunisia's geopolitical role, and the role of some influent EU Member States in the Tunisian equation.

Whatever the reasons behind this reality, the EMHRN wished to conclude this point by recalling that the European Commission, through the communications it adopted in 2001 and 2003 (quoted in chapter 2), which were approved by all EU Member States through the European Council, opted for a positive approach in the field of human rights in its external relations based on dialogue and incentives.

In this respect, the Commission wisely underlined that a successful outcome to this

76 Commissioner Füle, at a press conference in Tunisia held 30 March 2010, http://www.tunisiatoday.com/archives/59369

77 The only progress registered by the EU in the field of Human Rights is mainly on women's rights, the fight against poverty and education. It is worth recalling that most of the progress in these areas date back to President Habib Bourguiba's time, and cannot be credited to the current President. Besides, the fact that progress in those fields is reported each year in the same terms in a somewhat ritual way in the reports on Tunisia implies that nothing new is happening in this regard.

initiative depends on the concrete willingness of States to cooperate. Consequently, it is recommended that:

> *« The EU should pursue this approach wherever possible, while recognising that in some cases, the third country may have no genuine commitment to pursue change through dialogue and consultation, and negative measures may therefore be more appropriate. This is the basis on which the EU's essential element agreements, and the 'suspension clauses' operate. All avenues for progress are explored before the EU resorts to sanctions.*[78]»

The Tunisian government has clearly shown that it is not ready to engage in reform through dialogue and consultations.

The EU did not explore all opportunities to obtain more convincing outcomes in the field of human rights and democratisation in its relations with Tunisia. If that had been the case, it should then have adopted negative conditionality measures, which it did not. Therefore, if the EU has not explored all avenues, we can conclude that up until now, it has not done its work, as it should have.

78 Communication of the Commission to the Council and European Parliament, Role of the European Union in the Promotion of Human Rights and Democratization in Third Countries, COM(2001) 252 final version, 8 May 2001.

Recommandations

The EMHRN considers that the EU did not exhaust all the means it had at its disposal for the promotion and protection of human rights in Tunisia, and makes the following non-exhaustive recommendations:

Recommendations addressed to the Tunisian authorities

- Respect Human Rights and fundamental freedoms in accordance with international conventions, and ensure the national legislation complies with international human rights standards and United Nations recommendations;
- Ensure Tunisia abides by the international treaties and conventions on the prohibition of torture to which Tunisia is party to;
- Grant UN Special Rapporteurs' requests for invitations, and notably the United Nations Special Rapporteur on Torture and Other Inhuman and Degrading Treatments, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, the Special Representative of the UN Secretary-General on the Situation of Human Rights Defenders and the United Nations Special Rapporteur on Freedom of Expression;
- Guarantee freedom of expression for all citizens, including the freedom to create, publish and disseminate news through any kind of medium, freely broadcast on the radio and TV, and implement the recommendations of the United Nations Special Rapporteur on Freedom of Expression following his visit to Tunisia in 1999;
- Lift all kind of censorship on the Internet;
- Guarantee freedom of association for NGOs, trade unions and professional organisations, in particular for lawyers and journalists, notably by allowing the organisation of congresses, lifting the siege on the offices of independent civil society organisations and guaranteeing freedom of assembly;
- Guarantee the possibility for Tunisian human rights defenders to freely meet international NGOs in Tunisia;
- Put an end to arbitrary measures of freezing and banning fund transfers to independent NGOs within the framework of legal and transparent support programmes;
- Stop the harassment of human rights defenders;
- Initiate an effective process to settle the crisis between the State and the Tunisian League for Human Rights (LTDH), which has paralysed the organisation's activities for years;
- Release human rights defenders, trade union members, students and political prisoners imprisoned following unfair trials and give their full rights backto these activists ;
- Promulgate a blanket amnesty law for political prisoners;
- Ensure the timely repeal of the amendments to article 61bis of the Criminal Code, as they are in clear breach of international human rights law;
- Meet the commitments made at the Marrakesh Ministerial Conference in 2009 regarding gender equality, and draft a national plan of action on this issue, involving relevant civil society stakeholders

Recommendations addressed to the EU

- Raise in a systematic, firm and strong manner and at all levels the issue of human rights and democratisation in the political dialogue with Tunisia;
- Make consistent and systematic public statements and take appropriate steps in response to specific events violating human rights abuses in Tunisia;
- In view of the coming negotiations on a potential deepening of the relations between the EU and Tunisia, reaffirm in practice that human rights are an essential element of the relations and make noticeable progress in the respect for international human rights standards a precondition to strengthening relations (in particular repealing article 61bis of the Penal Code);
- Adopt a detailed schedule for human rights reforms for Tunisia to commit to in the short term, in particular with a view to fulfilling the objectives of the current ENP Action Plan;
- Set precise benchmarks for an objective and steady monitoring of the implementation of objectives in the field of human rights and democratic reforms, especially in the framework of the ENP;
- Make all efforts to reinforce the chapters of the new ENP action plan with Tunisia (which should be adopted at the end of 2010) on human rights including freedom of association, gender equality,the rights of migrants and asylum seekers and on democratic reforms, including justice;
- Meet its commitment to mainstream human rights and gender equality in all EU policies and programmes;
- Adopt conditionality measures in cases where Tunisia is not willing to achieve change through dialogue, i.e. by making significant progress in the field of human rights a precondition to financial assistance in certain sectors;
- Check whether recommendations of the United Nations treaty monitoring bodies to Tunisia have been implemented on the ground, and use these recommendations as a standard to assess Tunisia's compliance with article 2 of the association agreement, with ENP principles in general and with the precise objectives spelled out in the ENP Action Plan with Tunisia;
- Implement relevant EU Guidelines on human rights, in particular on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
- Implement, at last, the EU Guidelines on Human Rights Defenders and provide visible and sustained support to human rights defenders in Tunisia, in particular through the observation of trials and visits of defenders at home or in their associations' offices; it is also important to meet with civil society more often, in Brussels and, most importantly, locally, in particular before and after the sessions of the 'Association Committee', the 'Association Council', the 'sub-committees' on 'Human Rights, justice and security, social affairs and migration';
- Encourage Tunisia to initiate reforms guaranteeing the independence of the judiciary and freedom of the press, and carry out, as a prerequisite to all programmes in those fields, an assessment of the EU-Tunisian programme of

support to modernisation of justice, whose conditions of implementation lack transparency;

- Guarantee respect for the rights of migrants, asylum seekers and refugees in the relations with Tunisia, and request Tunisia to do the same;
- Connect the activities of the sub-Committees on 'justice and security' and 'social affairs and migration' with the sub-Committee on 'human rights', and deal with the rights of migrants and asylum seekers and with the reform of the judiciary also within the sub-committees. For instance, the second meeting of the sub-Committee on 'justice and security' discussed legislative reforms in the field of police custody and pre-trial detention, as well as the fight against terrorism. Those two issues are central to human rights debates;
- Mainstream human rights in all the activities of the EU-Tunisia sub-committees;
- Make the records of the meetings of the EU-Tunisia sub-committees public;
- Request the Tunisian authorities to organise joint press conferences upon the release of the yearly progress reports by the European Commission on the ENP Action Plan, and allow national media outlet to report on them;
- More precisely, request the European Parliament to publish an annual report on the situation of human rights in Tunisia;
- Encourage Tunisia to implement the conclusions of the Marrakesh Ministerial Conference of the Mediterranean Union in 2009 on gender equality and design a national Plan of Action on this specific issue.

Annex 1: 42 'links' on the Human Rights situation in Tunisia

1. Association des Chrétiens contre la Torture – France

http://www.acatfrance.fr

2. Amnesty International

Freed but not free: Tunisia's former political prisoners

www.amnesty.org/en/library/asset/MDE30/.../mde300032010en.pdf

TUNISIE – Report 2009

http://thereport.amnesty.org/fr/regions/middle-east-north-africa/tunisia

3. Cairo Institute for Human Rights Studies

Les Droits de l'Homme dans le Monde Arabe en 2009 «Bastion d'Impunité, Mirages de Réforme»

http://www.cihrs.org/Images/ArticleFiles/Original/543.pdf

4. Comité pour la protection des journalistes

http://www.cpj.org/mideast/tunisia/

5. Freedom House

Country Report 2009

http://www.freedomhouse.org/template.cfm?page=22&year=2009&country=772

6. Human Rights Watch

Une prison plus vaste : Répression des anciens prisonniers politiques en Tunisie

http://www.hrw.org/sites/default/files/reports/tunisia0310frwebwcover.pdf

Chapitre du Rapport mondial: Tunisie 2010

http://www.hrw.org/sites/default/files/related_material/Tunisia.fr.PDF

Chapitre du Rapport mondial: Tunisie 2009

http://www.hrw.org/sites/default/files/related_material/tunisia_fr.pdf

7. International Commission of Jurists (ICJ/CIJ)

www.icj.org

8. IFEX: Le réseau mondial pour la liberté d'expression – Groupe de surveillance «Tunisie »

http://www.ifex.org/tunisia/fr/

9. Observatoire pour la protection des défenseurs des droits de l'homme – programme conjoint FIDH/OMCT

Rapport annuel 2007

http://www.fidh.org/IMG/pdf/report2007obs_fra.pdf

Rapport annuel 2009

http://www.fidh.org/IMG/pdf/MMO-FR.pdf

10. Organisation Mondiale Contre la Torture OMCT

La situation des droits de l'Homme en Tunisie – janvier 2009

www.omct.org

11. REMDH – Groupe de travail Liberté d'association

Rapport 2009 sur la liberté d'association

http://fr.euromedrights.org/files.php?force&file=documents/FR_REMDH_Rapport_2009_sur_la_libert___d__association_217952683.pdf

12. REMDH – Groupe de travail Justice

Rapport 2008 sur l'indépendance du système de la justice en Tunisie

http://fr.euromedrights.org/files.php?force&file=documents/Tunisie___Ind__pendance_et_impartialit___de_la_justice_939922732.pdf

13. Reporters Sans Frontières

http://www.rsf.org/fr-rapport164-Tunisie.html

14. Global Integrity

Report 2008

http://report.globalintegrity.org/reportPDFS/2008/Tunisia.pdf

15. Transparency International

Rapport régional afrique du nord et moyen orient

http://www.transparency.org/regional_pages/africa_middle_east/afrique_du_nord_et_moyen_orient

16. Comité des Droits de l'Homme des Nations Unies (PIDCP)

Observations finales 2008 : http://daccess-ods.un.org/TMP/1242001.html

17. Comité des droits économiques sociaux (PIDESC)

Observations finales 1999

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.36.Fr?Opendocument

18. C.A.T. ONU (Comité Anti-Torture)

Observations finales 1998

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.54.44,paras.88-105.Fr?Opendocument

19. C.E.D.E.F - CEDAW (Contre toutes les discriminations à l'égard des femmes) O.N.U.

Observations finales 2002 : http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.57.38,paras.171%E2%80%93210.Fr?Opendocument

20. Rapporteur spécial des Nations Unies sur la promotion et la protection du droit à la liberté d'opinion et d'expression (1999)

http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/1999/64&Lang=F

21. Rapporteur spécial des Nations Unies sur la sauvegarde des droits de l'Homme dans la lutte antiterroriste

http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/64/211&Lang=F

Visite en Tunisie du rapporteur spécial

http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9772&LangID=F

22. UNDP POGAR Democratic Governance Profile- Tunisia

http://www.undp-pogar.org/countries/country.aspx?cid=20

23. UNDP Arab Human Rights Index

http://www.arabhumanrights.org/en/countries/country.aspx?cid=20

24. Examen Périodique Universel - (2008) – Conseil des droits de l'Homme des Nations Unies

http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CTNSession1.aspx

25. Pauvreté et Extrême Pauvreté

http://portal.unesco.org/shs/en/files/5494/10990365171Tourette.pdf/Tourette.pdf

Résolution 2/2 du Conseil de droits de l'homme

http://www2.ohchr.org/english/issues/poverty/docs/A-HRC-RES-2-2_fr.pdf

Résolution de la Commission des droits de l'homme 2001/31

http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e5c3e313547fffeec1256a3b0043c69a?Opendocument

26. Rapport annuel des violations des droits syndicaux (2009)

http://survey09.ituc-csi.org/survey.php?IDContinent=1&IDCountry=TUN&Lang=FR

27. Département d'Etat U.S.

Rapport sur les droits de l'homme 2008

http://french.tunisia.usembassy.gov/root/nouvelles/nouvelles-de-washington/rapport-droits-de-lhomme-2008.html

28. CRLDHT et Association de Lutte Contre la Torture en Tunisie (ALTT)

Résumé exécutif du rapport « La torture en Tunisie et la loi antiterroriste du 10 décembre 2003 »

http://www.crldht.org/IMG/doc/rapport_resume_executif.doc

29. LTDH (Ligue Tunisienne pour la défense des Droits de l'Homme : Cf. site FIDH : http://www.fidh.org

http://www.fidh.org/-TUNISIE-LIGUE-TUNISIENNE-DES-DROITS-DE-L-HOMME-

30. ATFD – Association Tunisienne des Femmes Démocrates

Femmes_feministes@yahoo.fr

31. AFTURD – Association des Femmes Tunisienne pour la Recherche en Développement

www.facebook.com/people/Afturd-Ong/1138929220

afturd@gmail.com

32. Syndicat des journalistes de Tunisie

http://www.snjt.org/

33. CNLT
Notamment rapports sur la situation des prisons et sur la loi anti-terroriste
http://www.fidh.org/-TUNISIE-CONSEIL-NATIONAL-POUR-LES-LIBERTES-EN-

34. OLPEC
http://www.observatoire-olpec.org/1ere%20%20Fr.html#

35. Liberté Equité
Cf. www.tuniswnews.net

36. AISPP
Cf. www.tunisnews.net

37. Fédération tunisienne des citoyens des deux rives
www.ftcr.eu

38. Association des Tunisiens en France – ATF Paris
www.atf-paris.fr

39. Tunisia watch (M° Mokhtar Yahiaoui)
http://www.tunisiawatch.com

40. Albadil info
pcot@albadil.org

41. Kalima Tunisie
www.kalimatunisie.com

42. PDP info
www.pdpinfo.org

fidh International Federation for Human Rights

OMCT SOS-Torture Network

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأورومتوسطية لحقوق الإنسان

Attn. Prime Minister Fredrik Reinfeldt

Presidency of the European Union

Attn. Ministers of Foreign Affairs of EU member-States

Paris-Geneva-Copenhagen, November 26, 2009

Re: Severe repression of independent journalists, human rights defenders and political opponents in Tunisia undermines the credibility of the EU-Tunisia partnership

Dear Prime Minister, dear Ministers,

The International Federation for Human Rights (FIDH), the World Organisation Against Torture (OMCT) and the Euro-Mediterranean Human Rights Network (EMHRN) are deeply concerned about the escalation of acts of harassment against - and assaults on - independent journalists, human rights defenders and political opponents in Tunisia, and their impact on the credibility of the European Union (EU) and Tunisia partnership.

Prior, during and subsequent to the recent presidential election, independent journalist, human rights defenders and political opponents have faced intense repression by the Tunisian authorities and unidentified individuals in plain clothes following their independent critical review of the electoral process.

Our organisations fear that the repression against independent journalist, human rights defenders and political opponents is part of "the measures" announced by President Ben Ali "against anyone who will express accusations or doubts on the integrity of the electoral process, without providing concrete evidence". On the eve of the polling day on October 25, 2009, the President also stigmatised those he qualified as the "tiny Tunisian minority who denigrates its country by relying on foreign groups". These threats were further repeated by President Ben Ali during his speech before the National Assembly on November 13, 2009.

In particular, we call for the immediate release of human rights defender Taoufik Ben Brik, who was

sentenced today to six months' imprisonment on the basis of fabricated charges and following a blatantly unfair trial, as well as of human rights defenders Zouhair Makhlouf and Mohamed Soudani, presently arbitrarily detained and facing unfair judicial proceedings.

The increased level and range of repressive acts, including physical assaults, targeting independent journalists, human rights defenders and political opponents have been rendered particularly serious by the lack of an independent Judiciary in the country and defamatory media campaigns. While the release on parole of rights activists following the Gafsa demonstrations early November is a sign of the Tunisian authorities' sensitivity to criticism of their human rights record, the recent detention of independent journalists, and the upsurge in violent acts against human rights defenders and political opponents, are revelatory of the increasingly systematic and harsh nature of the repression.

It is noted in this respect that, according to the EU-Tunisia mutually agreed Action Plan covering the years 2005 to 2010, one of the actions for the medium-term is to "[c]ontinue to promote the right to associate and to assemble and the freedom of expression and opinion on the basis of relevant recommendations by the UN's ICCPR Committee, including in relation to the role of NGOs".

However, the escalation of violence, together with the absence of any substantial improvement in the human rights situation in general in Tunisia over the past years, is indicative of the failure of EU efforts to promote the respect for human rights and fundamental freedoms in Tunisia as envisaged by the Action Plan. It shows, in particular, the absence of concrete positive results of the discussions held in the Association Council, the Association Committee and the Subcommittee on Human Rights. The events over the recent weeks moreover demonstrate the limits of the EU's public and confidential demarches and public statements on individual cases and general human rights concerns.

This failure of EU foreign policy severely undermines the credibility and coherence of the European Neighbourhood Policy (ENP). Further, it increases the gap between the goals of the ENP, which are "based on the mutually recognized acceptance of common values, such as democracy, the rule of law, good governance [and] respect for human rights" (Action Plan, p. 1) and the reality of the situation in Tunisia. Our organisations consider that this gap is now so serious that it should lead to a thorough reconsideration by the EU of its policy with regard to Tunisia. On the basis of the principle of differentiation, according to which the deepening of relations with each partner of the ENP depends on the degree to which the partner effectively implements ENP common values, the EU should therefore promptly proceed to a revision of Tunisia's current privileged status.

In the light of the aforementioned principle of differentiation and in order to reaffirm its commitment to the respect for human rights as an ENP common value, our organisations urge the EU to show strong and public support for the Tunisian civil society, and are making the following recommendations to the EU and its 27 member States:

1. To immediately establish a visible protection mechanism in favour of human rights defenders who are assaulted, imprisoned, judicially harassed or facing any other act of harassment.

This mechanism would review the local strategy of implementation of the EU Guidelines on Human Rights Defenders in Tunisia in cooperation with independent civil society actors. It should provide for:

- constant trial coverage by the EU, including the Delegation of the European Commission (EC) of Tunisian human rights defenders who are victims of judicial harassment, and the publication of reports on the procedural irregularities, violations of fair trial standards and other issues of concern noted throughout the hearings;
- regular visits to detained defenders by EC and other EU diplomats, and the publication of reports on their health status and conditions of detention;
- an escort of defenders by diplomats in situations where there may be a serious risk to their physical security;
- the hosting of civil society meetings when these are illegally/arbitrarily blocked by the Tunisian police or other authorities;
- a scheme to map and track down cases of unpunished violations of the rights of human rights defenders, to be raised with the Tunisian authorities whenever possible; including follow up on unsuccessful legal complaints submitted by human rights defenders to Tunisian courts or other relevant authorities;
- public statements in support of human rights defenders.

To facilitate the work by the EU in support of human rights defenders, we attach for your attention a list of persons at risk of violence in Tunisia.

2. To refuse the opening of negotiations on a potential "advanced status" for Tunisia and freeze all discussions on the upgrading of EU-Tunisia relations if immediate, concrete and substantial improvements in the human rights situation in Tunisia are not forthcoming.

3. To consider, on the basis of the differentiation principle and in view of the continued deterioration of the human rights situation despite ten years of efforts within the framework of the ENP, the adoption of measures aimed at downgrading the EU engagement in Tunisia in the field of economic and financial cooperation and the suspension of negotiations on the establishment of a free-trade zone.

Our organisations would be pleased to meet with representatives of your respective Government to discuss the protection modalities in further detail.

In the hope that these considerations and recommendations will be swiftly and effectively taken into account within the framework of your mandate, we remain,

Yours sincerely,

Souhayr Belhassen	Eric Sottas	Kamel Jendoubi
FIDH President	OMCT Secretary General	EMHRN President

Surname	*First name*	*Activity*	*Situation*	Reactions of FIDH and OMCT, in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, and EMHRN
Mr. Ben Brik	**Taoufik**	Journalist, Member of CNLT	ARBITRARY DETENTION / Judicial proceedings	- Joint Observatory-EMHRN Press Release, October 29, 2009. - Joint Observatory-EMHRN Press Release, November 3, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009. - Joint Observatory-EMHRN Press Release, November 26, 2009.
Mr. Makhlouf	**Zouhayr**	Journalist, Member of *Liberté & Equité*	ARBITRARY DETENTION / Judicial proceedings	- Observatory Urgent Appeal TUN 007 / 1009 / OBS 154. - Joint Observatory-EMHRN Press Release, October 29, 2009. - Joint Observatory-EMHRN Press Release, November 3, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009. - Joint Observatory-EMHRN Press Release, November 26, 2009.
Mr. Soudani	**Mohamed**	Unionist	ARBITRARY DETENTION / Arbitrary sentence	- Joint Observatory-EMHRN Press Release, November 26, 2009.
Mr. Abbou	**Mohamed**	Member of CNLT, Lawyer	Harassment	- Joint Observatory-EMHRN Press Release, November 3, 2009.
Mr. Ayadi	**Abderaouf**	Lawyer, member of CNLT	Harassment / Search	- Joint Observatory-EMHRN Press Release, June 25, 2009. - Joint Observatory-EMHRN Press Release, November 17, 2009.
Mr. Azounna	**Jaloul**	Member of the Union of Writers	Harassment / Interrogation	
Mrs Benachour	**Sana**	Member of ATFD	Harassment	
Mr. Ben Salem	**Ali**	President of Bizerte LTDH section	Harassment / Permanent surrounding of residence & office	- Observatory Annual Report 2009. - Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009.
Mrs Bensedrine	**Sihem**	Spokesperson of CNLT	Harassment / Acts of Violence / Slander	- Observatory Urgent Appeal TUN 001 / 0109 / OBS 001. - Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Observatory Urgent Appeal TUN 006 / 1009 / OBS 152. - Joint Observatory-EMHRN Press Release, November 3, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009.

Mr. Bghouri	**Neji**	Journalist, President of SNJT	SNJT Takeover by Tunisian authorities / Attempts of removal from Presidency	- Joint Observatory-EMHRN Press Release, September 11, 2009.
Mr. Boukkedous	**Fahem**	Correspondent for *El Hiwar*	Judicial proceedings	- Joint EMHRN-Observatory Press Release, November 6, 2009.
Mr. Boukhdir	**Slim**	Journalist, member of *Liberté & Equité*	Harassment / Acts of violence	- Joint Observatory-EMHRN Press Release, October 29, 2009.
Mr. Chammari	**Khemais**	Executive member of EMFHR	Harassment / Slander	- Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Joint Observatory-EMHRN Press Release, June 25, 2009. - Observatory Urgent Appeal TUN 005 / 0709 / OBS 101. - Joint OMCT-FIDH-EMHRN Press Release, October 15, 2009
Mrs Cherif	**Khadija**	Member of ATFD	Harassment	
Mrs Dhifaoui	**Zakia**	Member of CNLT	Harassment	- Observatory Urgent Appeal TUN 001 / 0109 / OBS 001.3.
Mr. Dilou	**Samir**	Member of AISPP	Harassment / Search	- Observatory Press Release, June 25, 2009.
Mr. El Bey	**Moez**	Journalist at *Kalima*	Harassment	
Mr. Hajji	**Adnane**	Unionist	Arbitrary sentence / Release in November 2009 / Harassment	
Mr. Hajji	**Lofti**	Journalist	Harassment	- Observatory Press Release, June 25, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009.
Mrs Hamdi	**Faten**	Journalist at *Kalima*	Harassment	- Observatory Urgent Appeal TUN 001 / 0109 / OBS 001.3.
Mr. Hammami	**Ayachi**	Member of LTDH	Harassment	- Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Joint Observatory-EMHRN Press Release, June 25, 2009.
Mr. Hammami	**Hama**	Editor in chief of *Al Badil info*	Harassment / Acts of violence	- Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Joint OMCT-FIDH-EMHRN Press Release, October 15, 2009
Mr. Hamza	**Hamza**	Member of *Liberté & Equité*	Harassment / Judicial proceedings	- Joint Observatory-EMHRN Press Release, November 17, 2009.
Mr. Harouni	**Abdelkrim**	Member of *Liberté & Equité*	Harassment / Judicial proceedings	- Joint Observatory-EMHRN Press Release, November 17, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009.
Mr. Hedhili	**Abdelwahab**	President of the Jendouba LTDH section	Harassment	- Observatory Press Release, June 2, 2009.

Mr. Hidouri	**Lofti**	Journalist	Harassment	- Observatory Press Release, June 2, 2009.
Mr. Labidi	**Bechir**	Unionist	Arbitrary sentence / Release in 11/2009 / Harassment	- Joint Observatory-EMHRN-AI Open Letter, July 17, 2009.
Mr. Mestiri	**Omar**	Member of CNLT, Editor-in-Chief of *Kalima*	Harassment / Acts of violence	- Observatory Urgent Appeal TUN 001 / 0109 / OBS 001.3. - Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Joint Observatory-EMHRN Press Release, November 17, 2009. - Joint Observatory-EMHRN Press Release, November 20, 2009.
Mr. Matar	**Abdallah**	Lawyer, Member of CNLT	Tax harassment	
Mrs Nasraoui	**Radhia**	President of ALTT	Harassment / Search / Acts of violence / Slander / Obstacles to freedom of movement	- Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009. - Observatory Urgent Appeal TUN 004 / 0509 / OBS 079. - Observatory Urgent Appeal TUN 004 / 0509 / OBS 079.1. - Joint Observatory-EMHRN Press Release, June 25, 2009. - Joint OMCT-FIDH-EMHRN Press Release, October 15, 2009 - Joint Observatory-EMHRN Press Release, October 21, 2009.
Mr. Nouri	**Mohammed**	President of *Liberté & Equité*	Harassment	
Mr. Romdhani	**Messaoud**	Unionist, President of the Kerouan LTDH section, Spokesperson of the National Support Committee of the Gafsa Basin Inhabitants	Arbitrary sentence / Release in 11/2009 / Harassment	- Observatory Annual Report 2009. - Joint OMCT-FIDH-EMHRN Press Release, April 16, 2009.
Mr. Trifi	**Mokhtar**	President of LTDH	Harassment / Slander	
Mr. Zoghlami	**Jalel**	Director of *Kaws el Karama*	Harassment	
Mr. Zouabi	**Moudi**	Journalist, correspondent for *Al-Quds Al-Arabi* & *Al-Arabyya*	Harassment	- Joint Observatory-EMHRN Press Release, October 29, 2009.

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية ـ المتوسطية لحقوق الإنسان

Vestergade16 -1456 Copenhague K - Danemark
Tél : +45 32 64 17 00 **– Télécopie :** +45 32 64 17 02
Email : info@euromedrights.net
www.euromedrights.org